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Current Topics.

Solicitors and the Cabinet.

IN his pleasantly reminiscent speech, last week, at the annual dinner of the Old Finchleian Club connected with his old school, Christ's College, Finchley, Mr. LESLIE BURGIN, the Minister of Transport, recalled the keen interest he took in the political debates at the school in his boyhood, although at that time he had no proleptic vision of ever being returned to the House of Commons, still less of attaining to Cabinet rank, in which capacity, as we all know, he has proved one of the most efficient members of the Government. Curiously enough, it is only in comparatively recent times that members of the solicitor branch of the Profession have attained to this position, the reason probably being that in former days most of them were too much engrossed in the arduous and multifarious duties falling to them to carry out on behalf of their clients. Now, we can count a goodly number of solicitors who not only have been active members of Parliament, but have likewise been members of the Cabinet. If we mistake not, the first of these was Mr. H. H. FOWLER, afterwards LORD WOLVERHAMPTON, of whom a dispassionate observer said that he showed a remarkable capacity for debate, and for clear and convincing statement, and who did excellent service in the cause of local government. Then there was Sir WILLIAM JOYNSON-HICKS, popularly known as "Jix," who filled the office of Home Secretary, and of whom the late Mr. AUGUSTINE BIRRELL waggishly remarked that while actively engaged in prosecuting a vigorous campaign against Anglo-Catholic views, he was at the same time a prosperous and highly honourable solicitor of the High Court who found time not only to attend to the affairs of many private clients but also to those of that democratic and truly comprehensive institution, the General Omnibus Company, which occasionally found itself in court to meet the charge of running over stray foot travellers—both Protestant and Catholic—in the crowded street of this great Metropolis. But no mention of the solicitor branch and its association with politics would be complete without recalling that solicitor who attained to the highest rank in the sphere of statesmanship in this country, that of Prime Minister, namely Mr. LLOYD GEORGE, whose abundant energy and driving force are well within the recollection of each one of us.

Traffic Courts.

THE House of Lords Select Committee on the Prevention of Road Accidents, which has decided not to meet again until the Wednesday following the reassembly of the House of Lords after the Easter recess, has up to the time of writing held nine meetings at which a great variety of interesting evidence has been tendered. Representatives of every class of road user have been heard, except the Pedestrians' Association, which declined the invitation to give an address, and a considerable number of suggestions have been put forward. We have dealt in these columns with some of the evidence which appeared to be of particular interest. Considerations of space have precluded our giving a description of many of the suggestions which have, moreover, been accorded sufficient publicity in the daily Press, but in view of its intrinsic importance some mention should be made of the proposal put forward by LORD ELTON on behalf of the Road Accidents Emergency Council concerning the setting up of special road traffic courts. It was suggested that some 500 such courts should be created throughout the country and that they should be both civil and criminal. They would be concerned with matters of road traffic which now go before the High Court, the county court, the magistrates, the chief constables, and, so far as licences are concerned, the Ministry of Transport and local authorities. They would have exclusive jurisdiction in such cases, and would be composed of a traffic judge—a barrister with at least ten years' practice—a traffic registrar and a traffic prosecutor. It may be remembered that similar proposals were put forward by Mr. R. GRAHAM PAGE in a paper read at the Provincial Meeting of The Law Society in September, 1935, extracts of which were subsequently published in pamphlet form and commented on in these pages. In response to LORD ALNESS, the chairman of the House of Lords Committee, who expressed himself as rather shocked as a Scottish lawyer at the idea that the proposed courts should combine the duties of investigator and judge, LORD ELTON stated that he believed there was some analogy with the Admiralty courts, and urged that the prosecutor—a term which, it was admitted, was perhaps unfortunate—would be responsible for laying all the facts before the court. Readers will probably entertain widely different views of the feasibility or desirability of these proposals. Our brief note on the matter may well be

concluded by quoting the chairman's views on the matter. "I feel," he said, "that the scheme is one that requires a great deal more thinking out with technical and legal advice than you have been able to give it up to now. But the purpose of it is quite clear and interesting."

Roads and the Human Factor.

IT is probable that so long as the present toll of the roads continues—and there seems little likelihood of its abating in the near future—the existing layout of many of the highways or the failure of the human element to take proper precautions as the main cause of accidents will continue to form occasion of heated debate. Both these factors were alluded to by LORD ELDON in the course of his evidence before the committee. A more rigid enforcement of the speed limit and a more effective warning in the Highway Code concerning the danger of alcohol for motorists were among the recommendations of the Road Accidents Emergency Council under the latter head, while a new system of highways and the improvements of existing roads were advocated with reference to the former. If such provision were not made, it was urged that there would be strangulation of road traffic, particularly in urban areas, in the near future and a considerable increase in the volume of accidents. Particularly interesting evidence on the subject was given at an earlier session of the committee by Mr. G. T. BENNETT, the county surveyor of Oxfordshire, who advanced the view that if road defects were eliminated there would be less liability to human error and the number of accidents would be considerably reduced. He urged that the information in figures published by the Ministry of Transport gave the impression that there was no great hope of improving the accident position by a comprehensive improvement of the roads of the country, and that such impression was wrong. In 24 per cent. of the fatal accidents in his records road defects were not a contributory cause; in the remainder they were. The inadequacy of the road system to meet present day requirements as a source of road accidents was also stressed by evidence tendered on behalf of the Automobile Association on behalf of which, at an earlier session of the committee, highways at least 300 feet wide against the possibility of future developments were advocated. There can be little doubt that the existing roads fail to provide a suitable arena for the potentialities of the modern motor vehicle and that much can be done to improve the position for the standpoint of safety by removing existing danger points; but at the same time, it is difficult to acquit motorists who drive their vehicles with too little regard for the limitations so imposed and to view the difficulties presented by the present road system as more than a contributory cause of an accident for which in many cases the driver must take the principal blame.

"Guilty but Insane."

A POINT of very considerable interest and importance was taken, in the course of the recent discussion of the Infanticide Bill in the House of Lords, by LORD DAWSON OF PENN, who stated that he had hoped to apply a recommendation of LORD ATKIN'S Committee of some fifteen years ago, to make it clear that when once a Court of Assize had satisfied itself that the defendant was not responsible owing to the state of her mind, it would be possible to say insane at the time, therefore not responsible, therefore not guilty. In other words it was desired in the cases with which the Bill is concerned to substitute a verdict of "Insane, not guilty," for the verdict "Guilty but insane." It will be recalled that in *McNaughten's Case*, 10 Cl. & Fin. 200, 4 St. Tr. 847, it was held that, in order to establish a defence on the ground of insanity, it must be clearly proved that at the time of the committing of the act the party accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature or quality of the act he was doing, or if he did know it, that he did not know he was doing wrong. Such a proposition excludes moral responsibility being imputed to the person found to have committed the act with which he is charged and the law makes suitable provision for such being detained during His Majesty's pleasure. From the standpoint of the moral philosopher, there is much to be said from the verdict in such cases being derived from the subjective condition of the accused rather than from the objective quality of the act. But it may be argued that the immediate concern of the law is practical, and that, although in the interests of justice due weight should be given to the state of mind of the individual (as, indeed, it is), a verdict should indicate primarily the act which the accused is proved to have committed. From this standpoint the existing verdict is obviously to be preferred. Whether the perpetrator of an outrage be sane or insane the result for the unfortunate victim is identical and it may be doubted whether the present age is one inviting a change of the character proposed which gives increased prominence to the occasional absence of moral responsibility. Whatever views may be held upon this subject it is clear that the matter should be discussed as a general problem rather than in connection with a measure designed to deal with a particular situation. This difficulty was recognised by LORD DAWSON who intimated that he must bow to the opinion of his legal advisers that it would not be wise or desirable to have a verdict of the kind advocated for one group of people only, though he did so with regret. He intimated, however, that his efforts would be directed towards the introduction of a general measure to this effect.

The Probation System.

ONE of the less prominent but by no means unimportant facts which emerge from a perusal of the Criminal Statistics, 1936, is the wide variation evident in the different districts throughout the country in the use made of the probation system. Thus the percentage of offenders aged seventeen and upwards, bound over with supervision, was as high as 50.6 per cent. in one district, and as low as 2.6 per cent. in another; and although these are the extreme figures, the percentages for the various localities show a remarkable divergence. Mr. H. E. NORMAN, secretary of the National Association of Probation Officers, recently drew attention to the subject in connection with young persons who, he roundly stated, were either mentally deficient or reclaimable when they came before a court the first time. He stated further that the risks which the community ran in cases of wrong treatment were so great that a grave responsibility was thrown upon magistrates. The beneficial results of the system were also exhibited in the decline of the prison population, the number admitted annually having dropped from 186,000 to 35,000 during the past twenty-five years. The importance attached to the subject by the Home Office is sufficiently well known, and the announcement of a contemplated increase of considerable extent in the number of probation officers will come as no surprise. It is stated that in response to the invitation recently issued more than 1,600 applications have been received and that these are now being considered by the Home Office. At present there are some 1,050 probation officers in England and Wales, of which number about one-half are part-time workers. Recent arrangements concerning the training of these officers were alluded to in these columns a few weeks ago. Before leaving the subject it may be of interest to repeat certain remarks which were made by the Home Secretary at the recently held annual meeting of the Royal Society for the Assistance of Discharged Prisoners, and which exhibit the probation system as one of the factors tending towards the reduction of crime and its consequences. Sir SAMUEL HOARE said he believed that by the method of probation, by a commonsense use of the approved schools, and by a further development of the Borstal system they would be able still further to reduce the number of inmates of the prisons and to avoid the risk of turning young offenders into hardened criminals. That aim, he thought, would be brought much nearer if the various benches in the country would make even greater use than hitherto of the efficient

system of probation, which he was trying, with his advisers at the Home Office, to develop still further.

Postponement of Valuation Lists: Circular.

THE Ministry of Health recently sent to county valuation committees, and assessment committees and rating authorities outside London a circular (No. 1691) concerning the postponement until 1st April, 1941, of the operation of the third new valuation lists for which provision is made by the Rating and Valuation (Postponement of Valuations) Bill. That measure, the contents of which have already been indicated in these columns, was, it will be remembered, dictated, *inter alia*, by the desirability of affording adequate time for the investigation of complaints to the effect that the application of the existing law would in certain cases lead to hardship. "It will be clear to local authorities," the circular states, "that any such investigation will be considerably hampered unless there can be produced definite statements of fact as to the effect of the existing law not only in relation to the alteration of the assessment of individual properties or classes of property, but also in relation to such changes in rate poundages as would be effected, as a result of the revaluation, apart from any increase or decrease of the expenditure of the local authorities." It is intimated, however, that it will be possible to form a reasonably clear and definite view of the matter in the light of provisional revised assessment lists prepared on a uniform basis under the existing law, and that these provisional lists can best be prepared by proceeding with the preparations for revaluation which have already been begun by many local authorities. It is urged that if the two years of postponement are used to the fullest extent the result should be not only the clearing up of any question of hardship but also the establishment of such a degree of uniformity as might otherwise not have been obtained for a number of years, as well as a considerable saving of cost and labour of future valuations. The circular, to which is appended the letter of the Central Valuation Committee upon which the decision to postpone the lists was based, is published by H.M. Stationery Office (price 1d. net).

Recent Decisions.

IN *Elof Hansson Agency, Ltd.* v. *Victoria Motor Haulage Co., Ltd.* (*The Times*, 1st April), SINGLETON, J., held that the plaintiffs were entitled to recover in respect of the loss of a number of bales of greaseproof paper which the defendants had contracted to deliver from a ship in the Thames to the City of London, and which had been lost owing to the sinking of a barge which, as the learned judge found, was unseaworthy. His lordship declined to read into the contract the London Lighterage Clause in its amended form, and intimated that, if the defendants had the right to sub-contract, the plaintiffs could not be bound by terms which had not been communicated to them.

In *Turner* v. *Turner and Brown* (*King's Proctor showing Cause*) (*The Times*, 2nd April) LANGTON, J., allowed a decree *nisi* granted by BUCKNILL, J., in the exercise of his discretion, to stand on the ground that the petitioner who had lived and habitually committed adultery with a certain woman for eighteen months (as he admitted in answer to the King's Proctor's plea) had not deliberately misled the court by his discretion statement to the effect that he had committed adultery only once.

In *Liddy* v. *Joe Rock, Ltd.* (*The Times*, 5th April), CHARLES, J., awarded an actress, MISS NELLIE WALLACE, £2,550 for breach of a contract whereby the defendants undertook, if they exercised their options which she gave them on her exclusive services as a film actress artist from June, 1936, to June, 1939, to engage her to make three films for sums amounting in all to £1,950, and to pay her £600 if they failed to exercise their option on her services for the year ending June, 1938. The plaintiff had previously made a successful film and the learned judge also awarded her £1,000 damages on her claim for loss of publicity.

In *The London* (*The Times*, 6th April), an action brought by the owners of *The Rayford* and her master and crew suing for their lost effects against the owners of *The London* in respect of a collision between the two vessels which took place in a thick fog, Sir BOYD MERRIMAN, P., who was sitting with the Trinity Masters, held that both vessels were equally to blame.

In *Re Tilden, deceased; Coubrough* v. *Royal Society of London* (*The Times*, 7th April) SIMONDS, J., held that a proviso in a will to the effect that in no circumstances whatever was the will to be deemed to apply to certain real property or the proceeds of sale thereof amounted, in light of the will and codicils, to an exclusion for all purposes, with the result that the proceeds of sale, which were given to an institution disclaiming any interest therein, did not fall into residue but passed to the next of kin. *Re Fraser* [1904] 1 Ch. 726 followed. See *Blight* v. *Hartnoll*, 23 Ch. D. 218.

In *Lewis* v. *Cattle* (*The Times*, 8th April), a Divisional Court (LORD HEWART, C.J., and HUMPHREYS and MACNAGHTEN, JJ.) held that a police officer was "a person holding office under His Majesty" within the meaning of the Official Secrets Act, 1911, s. 2 (1) (*a*), and accordingly dismissed a journalist's appeal against his conviction at a police court of failing to give to a superintendent of police certain information, contrary to s. 6 of the Official Secrets Act, 1920.

In *Westminster Bank Ltd.* v. *Residential Properties Improvement Co. Ltd.* (*The Times*, 8th April), SIMONDS, J., held that in a foreclosure action all the debenture-holders interested in the property subject to the mortgage must be made parties and negatived the contention that, where one of the debenture-holders had been made a defendant to the action, there was power to make a foreclosure decree against the company and that defendant which would bind all persons interested in the equity of redemption. *Griffith* v. *Pound* [1890] 45 Ch. D. 533, followed.

In *Rex* v. *Board of Control Lunacy and Mental Deficiency for England and Wales; ex parte Winterflood* (*The Times*, 9th April), the Court of Appeal (SLESSER and CLAUSON, L.JJ., and GODDARD, J.) reversed a decision of the Divisional Court discharging a rule *nisi* for a writ of *habeas corpus* where the applicant alleged that he had been unlawfully detained for years as a mental deficient, and held that a continuance order that a defective be sent to an institution or placed under guardianship dated a few days after the expiration of the previous continuance order could not legalise the detention of the appellant in view of the unambiguous terms of s. 11 of the Mental Deficiency Act, 1913. The commissioner, who had to satisfy himself under s. 11 (2) of the Act with regard to the appellant's condition, did not come to a final decision until a week later, and this, it was intimated, was a further reason for allowing the appeal.

In *Wildmore* v. *Wildmore and Others* (*The Times*, 9th April), Sir BOYD MERRIMAN, P., pronounced for a will which had been burnt by the person named as the sole beneficiary, who was a sister of the deceased. It was intimated that other relatives of the testatrix who would have been entitled to share on an intestacy did not oppose the will.

In *Re a Debtor* (*The Times*, 12th April), a Divisional Court in Bankruptcy (LUXMOORE and MORTON, JJ.) reversed a decision of the registrar of a county court who had dismissed a bankruptcy petition presented against a debtor, and held that where judgment had been recovered against a married woman for a debt incurred partly before and partly after the coming into operation of the Law Reform (Married Women and Tortfeasors) Act, 1935, the court could look behind the judgment and that, if it ascertained that the sum due exceeded £50, it could make a receiving order. The court, therefore, made a receiving order, but stayed the advertisement for eight days pending notice of appeal. See *Re Vitoria* [1894] 2 Q.B. 387; *Re Fraser* [1892] 2 Q.B. 633; *Ex parte Lennox*, 16 Q.B.D. 315; and *Re a Debtor* [1917] 2 K.B. 60.

Criminal Law and Practice.

THE CLAIM OF RIGHT AGAIN.

In quashing the conviction in *R.* v. *Bernhard* (1938), 82 Sol. J. 257, Mr. Justice Charles, who delivered the judgment of the Court of Criminal Appeal, made some important and decisive pronouncements on the law as to the claim of right in the trial of charges under the Larceny Act, 1916. The judgment contains a fuller account of the facts than appeared from the previous report of the case on which we based our comment shortly after the trial (*ante*, p. 164).

The appellant was a Hungarian and had met the prosecutor on a train on the continent. She was his mistress from May, 1936 to August, 1937. At some time in June, she told him she had lost her money on the Stock Exchange and said that unless he helped her she would have to go on to the streets or commit suicide. He agreed in August to pay her £20 a month for a year, and then paid her £80 in advance of four months' payments. The appellant said that it was agreed that the balance of £160 should be paid in January, 1938, and that when she came to England in January, she believed she was entitled to £160 and had taken the advice of a Hungarian lawyer on the subject. The prosecutor's version was that she sought him out in January and threatened to expose him to his wife and the public by means of an advertisement in a newspaper unless he paid £160 forthwith.

The charge was under s. 30 of the Larceny Act, 1916, under which it is a felony to demand with menaces or by force anything capable of being stolen with intent to steal the same. Section 1 of the Act provides that "a person steals who, without the consent of the owner, fraudulently and without a claim of right made in good faith, takes and carries away anything capable of being stolen, with intent, at the time of such taking, permanently to deprive the owner thereof." "The test," said Mr. Justice Charles, "is whether, if the money had been obtained it would have been obtained in such circumstances that it could properly be said to have been stolen" (see *Reg.* v. *Walton*, 9 Cox C.C. 268). He added that if the matter were *res integra* there would no doubt be much to be said for the view which found favour with the Lord Chief Justice, that the words "claim of right" could not be read as including a claim which is unfounded in law. They were, however, bound by a long series of decisions to the effect that a person has a claim of right within the meaning of the section if he is honestly asserting what he believes to be a lawful claim, even though it may be unfounded in law or in fact. He referred to the passage in East's "Pleas of the Crown," Vol. II, p. 659 (mentioned in our previous comment, *ante*, p. 164), that "if there be any fair pretence of property or right in the prisoner, or if it be brought into doubt at all, the court will direct an acquittal."

The Lord Chief Justice had stated in his summing up that there could not be a claim of right made in good faith if the claim arose out of an immoral consideration, as no demand for money in consideration of past cohabitation could be enforced in law. Mr. Justice Charles said that the consideration was not immoral inasmuch as illicit relations between the parties had ceased and their renewal was not contemplated at the time when it was made. He quoted "Leake On Contracts" (8th ed., p. 585) to the effect that a promise made in consideration of the cessation of an illicit cohabitation, or in consideration of past illicit cohabitation or by way of compensation for seduction, is void simply for want of consideration, and would be *primâ facie* valid if in the form of a bond or a covenant under seal. He said that it was significant that Key and Elphinstone's "Precedents on Conveyancing" (11th ed., Vol. II, p. 568) contained a precedent for a "Deed of covenant securing an annuity to a past mistress." The appellant's ignorance of this point of law could not be used as an argument against the existence in her mind of a belief in the justice and legality of her claim.

At the trial the jury, after a retirement of forty minutes, returned to the court and passed to the Lord Chief Justice a note that one member, "although sharing the view of the remainder that the prisoner was guilty of endeavouring to obtain money by threats, will not agree to a verdict of guilty, because he holds the opinion that she honestly believed that the money claimed was due to her." The Lord Chief Justice then directed the jury that, on the admitted facts of this case, there could not be a claim of right, but that there might be a claim of wrong. Mr. Justice Charles said that the court was satisfied that in the present case there was sufficient evidence to justify a jury in finding that the appellant entertained an honest belief in her claim against the prosecutor.

It is clear from the note handed up to the Lord Chief Justice that the jury might have found that the prisoner had a claim of right, but for the answer to that note given by the Lord Chief Justice. The question of "honest belief" is eminently one for a jury whenever there is evidence supporting it, and it was undoubtedly a misdirection to lead the jury to believe that they were not to consider that point.

Administrative Provisions Relating to Wales.

A Bill providing for the appointment of a Secretary of State for Wales, and the creation of a department to be called the Welsh Office, was recently introduced in the House of Commons by Mr. Clement Davies and ten other Welsh members, acting on a non-party basis. The measure failed to achieve a second reading, because members who were not anxious for a debate continued to talk on the preceding measure, and thus stopped the Welsh Bill from being taken. The Bill proposed to transfer to an additional Secretary of State (subject to certain exceptions) all powers and duties now vested in any Minister of the Crown, so far as they are exercisable or to be performed in relation to Wales and Monmouthshire.

This is not the first legislative proposal for altering the present status of the Principality. In February of 1922 a far more ambitious Bill "to provide for the better government of Wales" was presented by Sir Robert Thomas; and in May of the same year Scots and Welsh members combined to introduce a "Government of Scotland and Wales Bill." As regards Wales, each of these measures made provision for the establishment of a Welsh legislature, to consist of His Majesty and two chambers, and of an executive, consisting of a Secretary of State, acting on behalf of His Majesty, and with the advice and assistance of Ministers for Wales chosen by the Secretary. The powers of the Legislature were to be applied to the peace, order and good government of Wales, but with expressed limitations, which followed generally the precedent of the Government of Ireland Act, 1920. Both measures, it may be noted, reserved to the United Kingdom Parliament the power to make laws in respect of companies, employers' liability, friendly societies, trade unions, industrial disputes and unemployment insurance—matters which, under the Act of 1920, were transferred to the local parliament. The Upper Chamber, or Senate, of the Welsh Parliament was to consist of thirty-six members, two to be elected by the council of each county and county borough in Wales, and two by the University of Wales. The House of Commons would have been composed of seventy-two members returned by constituencies to be defined by a Commission appointed by Order in Council. A separate Welsh Exchequer and Consolidated Fund were to be set up, and to be kept in funds by transferred taxation, with an "Imperial contribution" from the United Kingdom Exchequer. The "Scotland and Wales Bill" proposed that the Welsh Parliament might, after three years, apply to the

United Kingdom Parliament for a separate Welsh judiciary, thus reproducing the Courts of Great Session which were abolished by 11 Geo. 4 and 1 Will. 4, c. 70.

A minor measure of administrative change was proposed by a Bill of 1929, to make provision for the setting up of a Council of Education to control all grades of education in Wales. No doubt, the changes which have been made, and the proposed further changes, in Scottish administration, will stimulate the making of such proposals for Wales. Perhaps, with that possibility in view, it may not be out of place to refer shortly to the existing provisions which regulate Welsh administration.

These have their roots in the past—in the Statute of Wales, 12 Edw. 1, when the territory was re-annexed to the dominion of the Crown of England; in the turbulent times of the lords marchers and of Owen Glyndwr, whose legendary Parliament House survived at Dolgelly until 1881; and in the heavy hand of Henry the Eighth. Of the last-named, we read in the Statute 27 Henry 8, c. 26, which uses language hardly acceptable to modern nationalism, that, "His Highness . . . of a singular zeal, love and favour that he beareth towards his subjects of his said dominion of Wales, minding and intending to reduce them to the perfect order, notice and knowledge of his laws of this his realm, and utterly to extirp all and singular the sinister usages and customs differing from the same, and to bring the said subjects of this his realm and of his said dominion of Wales, to an amicable concord and unity," enacted in Parliament the following provisions:—

(1) That the dominion of Wales should be for ever incorporated with and united to the realm of England.

(2) That the county or shire of Monmouth should be for judicial and administrative purposes an English county.

These enactments give a clue to various references to Wales which occur in later volumes of the statute book. As late as 20 Geo. 2, c. 42 (The Wales and Berwick Act, 1746) it was found expedient to enact that, "in all cases where the Kingdom of England, or that part of Great Britain called England, hath been or shall be mentioned in any Act of Parliament, the same has been and shall from henceforth be deemed and taken to comprehend and include the dominion of Wales." The curious reader would no doubt like to know—if it be ascertainable—why this provision should have found its place, as it did, in an Act for granting duties upon houses, windows or lights. Be that as it may, the enactment of 1746 has often been disregarded in modern statutes. Moreover, there has of late been a tendency towards the creation of separate administrative arrangements for Wales, and also a tendency towards the inclusion of Monmouthshire in those arrangements. Both of these tendencies received an impetus from the National Health Insurance Act of 1911, which set up a body of Welsh Insurance Commissioners who were to have an office in some town in Wales and included Monmouthshire in Wales. Under present arrangements there is a Welsh Board of Health, which acts under the direction of the Minister of Health in insurance matters; there is a separate Insurance Fund for Wales, and the National Health Insurance Joint Committee must include a person having special knowledge and experience of such insurance in Wales. Wales *plus* Monmouthshire has an Advisory Board for ancient monuments; a Central Board for intermediate and technical education, and a Council of agriculture. The part of the Anglican Church which forms the Disestablished Church in Wales includes Monmouthshire. All the proposed measures above mentioned include Monmouthshire in Wales.

From time to time special provisions of law are enacted for Wales, or even for a part of Wales, as in the case of highways and bridges in the six southern counties. One such feature must often have come under the notice of readers spending a holiday in Wales—namely, the provision of 11 & 12 Geo. 5, c. 42, that "in Wales and Monmouthshire there shall be no permitted hours for licensed premises on Sundays." This enactment can be seen in operation by a person travelling out of Chester towards Wales, when he passes an inn with a signboard on which are the words: "The Last House in England. Open on Sundays." The traveller from Wales to Chester will read on the other side of the same board: "The First House in England. Open on Sundays."

It may be that demands for the separation of administrative arrangements as between England on the one hand, and Scotland or Wales on the other, will become so insistent as to lead to legislation of the type to which the "Government of Scotland and Wales Bill" and "Government of Wales Bill" belong. Such legislation may become necessary in order to satisfy national or "cultural" aspirations. But it would do almost nothing to reduce the burdens of the Westminster Parliament. Indeed, it is likely that such a Bill, if passed, would create greater inconveniences than those which it proposes to remove.

Company Law and Practice.

Rent in a Liquidation Again.

I DEALT with one or two aspects of this fruitful source of difficulty a short time ago, and this week I propose to consider rather the methods in which the landlord of a company in liquidation is able to enforce his rights than the extent of those rights, but before doing so I think it will be as well to set out what appear to me to be the main propositions in this connection in as short a form as possible, and it will afterwards be possible to see what the nature of the proceedings was in each of the cases which appear to establish those propositions. The propositions which I venture to consider cover most of this topic are as follows:—

A. In a simple case rent accrued due before the commencement of the winding up must be proved for;

B. Where the liquidator remains in possession for the purposes of the winding up; and—

(i) he goes out of possession before the next date for payment of rent after the commencement of the winding up, an apportioned part of the rent in respect of the period up to the winding-up order [r. 97 of the Winding-Up Rules, and not the date of the commencement of the winding up, which used to be the critical date] must be proved for, and in respect of the period in which he remains in possession must be paid in full as expenses of the winding up: cf. *Re South Kensington Co-operative Stores*, 17 Ch. D. 111;

(ii) he is in possession at the next date on which rent is payable after the winding-up order, an apportioned part of the rent up to the date of the winding-up order must be proved for, and the part in respect of the period from the winding-up order to the date for payment must be paid in full: *Re South Kensington Co-operative Stores*, *supra*;

(iii) he goes out between two days on which rent is due, both being after the winding-up order, apportioned rent after the winding-up order must be paid in full in respect of the period during which he actually stays in possession: *Shackell* v. *Chorlton* [1895] 1 Ch. 378 [presumably the result would have been the same even if the rent in that case had not been payable in advance];

(iv) rent payable in advance accrues due after the winding-up order, such rent must be proved for except an apportioned part in respect of the period for which the liquidator remains in possession, which must be paid in full;

C. Where the liquidator remains in possession and the landlord has a power of re-entry or some other power of making the lease less valuable—

(i) rent accrued due after the winding-up order must be paid in full even in respect of the period prior to the order: *Re Silkstone Co.*, 17 Ch. D. 158;

(ii) presumably in respect of a period after the winding-up order, not extending to a date on which the rent is next payable, he need only pay an apportioned part in respect of the period in which he was in possession;

(iii) rent payable in advance accrued due after the date of the order must probably be paid in full: cf. *Re Silkstone, supra.*

The cases under "B" above must, of course, be distinguished from those cases where possession was retained for the joint accommodation of the landlord and tenant, in which case the landlord can only prove. In each case it has been said that in certain circumstances the rent must be paid in full, but two of the cases quoted above were in fact summonses in liquidations for leave to distrain, and the other was a motion by the company to restrain the landlord from proceeding with a distress, and of course a mere right to distrain or to get leave to distrain from the court is not necessarily such a valuable right as the right to get an order for payment; for example, if there is no sufficient distress the landlord would not in that case get his rent in full unless there was an order for payment of it.

In the first of the cases referred to above, *Re South Kensington Co-operative Stores*, at p. 165, Fry, J., after discussing what rent should be proved for and what paid in full, concludes his judgment by saying: "In my judgment the rent which accrued due is that which ought to be proved for. The rent which cannot be proved for is that which ought to be paid in full. I shall therefore direct that the applicants be at liberty to distrain." It will be noted that though he says the rent ought to be paid in full, he only gives the applicant, who was the landlord, leave to distrain which, as I have already observed, is by no means necessarily equivalent to seeing that he does in fact get paid in full. At the end of his judgment, however, the report shows that counsel for the liquidator undertook to pay, on which the judge directed the liquidator to pay the rent. This does, at least, suggest that in the absence of the company's consent, leave to distrain is the only relief to which the landlord was entitled.

A similar right to distrain was the basis of the case of *Shackell* v. *Chorlton*. In that case the liquidator sought to restrain the landlord of the company from distraining in respect of rent due. It is not relevant to this present discussion to consider the effect of the decision as to the right to be paid and to prove for rent. After holding that part of the rent due to the landlord entitled him to distrain, Kekewich, J., says: "What ought to be done, I think, is this. The liquidator must have a reasonable time to consider when he is prepared to give up possession and remove his chattels. At the end of that time he must pay the rent to that date as a condition of being allowed to remove his chattels from the distress . . ." This, again, seems to show clearly that the only right of the landlord is to get leave to distrain, and that in this case, for example, if the rent which had become due by the time the liquidator was ready to go out of possession was of a greater amount than the value of the chattels the subject of the distress, he could go out without those chattels and without paying his rent, although in an earlier portion of his judgment the learned judge says that the liquidator must pay the rent and pay it in full; he must actually pay him twenty shillings in the pound.

In *Re Silkstone Co.*, the third of the cases referred to above, which was also a summons in a liquidation for leave to distrain, an order was made for the payment in full of the rent out of the assets of the company and that precedence should be given to payment of that amount. The reason for this case being treated by Fry, J., on a different footing from that on which he treated *Re South Kensington Co-operative Stores*, was that the landlords not only had a money demand against the company but also a power to render less valuable an asset of the company by reason of the fact that the lease in that case provided that the lessor could stop the working of the mine, the subject of the lease, when rent was in arrear. The lessor did in fact threaten to stop the working if his rent was not paid, and an exactly similar position would arise where there was a power of re-entry on non-payment of rent which the landlord threatened to enforce.

In the vast majority of cases this will be the position and the landlord will not therefore have to rely on his right to distrain. In cases where he would apparently have to rely on that right there is this further difficulty. If the liquidator stays in beneficial possession but goes out on the day before a part of the rent becomes due no right to distress in respect of that part of the rent will arise, and consequently proposition "B" (i) above is false. This is not so in practice, and the explanation is, I think, to be found in ss. 213 and 254 of the Companies Act. The former of these sections empowers the court in the case of an insolvent company, in a compulsory winding up, to make an order for the payment of expenses in such order of priority as the court thinks just. The latter provides that expenses incurred in a voluntary winding up shall be paid in priority to all other claims, and the cases to which I have referred show plainly that rent accruing or accrued during the beneficial possession of the liquidator is one of such expenses.

Where then there is nothing in the lease that gives the landlord the power of rendering less valuable an asset of the company, it should be borne in mind that there are two different principles on which the landlord may be entitled to be paid for the liquidator's beneficial occupation.

A Conveyancer's Diary.

THERE is a recent case which is worth noting upon the effect of s. 35 of the A.E.A., 1925, where a company had a lien upon shares held by a debtor to the company and the shares had been bequeathed by will, the question being whether the legatee took the shares subject to the lien or was entitled to have the lien discharged out of the testator's residuary estate.

Legacy of Shares upon which the Company had a Lien—Effect of s. 35 of the A.E.A., 1925.

It will be remembered that by the Real Estates Charges Act, 1854 (which we have usually known as "Locke Kings Act"), and the amending Acts of 1867 and 1877, a devisee of real or leasehold estate which was subject to any mortgage or charge took *cum onere*, but until the A.E.A. the same rule did not apply to pure personalty.

Section 38 (1) reads as follows:—

"Where any person dies possessed of or entitled to, or under a general power of appointment (including the statutory power to dispose of entailed interests) by his will disposes of an interest in property which at the time of his death is charged with the payment of money whether by way of legal mortgage equitable charge or otherwise (including a lien for unpaid purchase money) and the deceased has not by will or other document signified a contrary or other intention, the interest so charged shall as between the different persons claiming through the deceased be primarily liable for payment of the charge, and every part of the said interest, according to its value, shall bear a proportionate part of the charge upon the whole thereof."

This is a re-enactment of the provisions of the Real Estate Charges Acts, but is extended to apply to property over which the deceased had a general power of appointment and an entailed interest which the testator has power to dispose of by will under s. 176 of the L.P.A., 1925.

Then sub-s. (2) enacts that a "contrary or other intention" shall not be deemed to be signified (A) by a general direction for the payment of debts of the testator out of his personal estate or his residuary estate, or (B) by a charge of debts upon such estate unless the intention is further signified by words expressly or by necessary implication referring to all or some part of the charge.

The case to which I have referred is *Re Turner, Tennant* v. *Turner* [1938] W.N. 155; 82 SOL. J. 295. A testator, A. J., had a considerable holding of shares in a private company. Article 10 of the Articles of Association of the company provided: "The Company shall have a first and paramount lien upon all shares registered in the name of each member (whether solely or jointly with others) for his debts, liabilities and engagements solely or jointly with any other person to or with the Company, whether the period for payment, fulfilment or discharge thereof shall have actually arrived or not, and no equitable interest in any share shall be created except upon the footing and condition that Article 6 is to have full effect." Article 6 provided that the company should be entitled to treat the registered holder of any share as the absolute owner thereof and should not be bound to recognise any mortgage or charge thereon or any equity or trust relating thereto. The testator held 143,000 ordinary shares in the company and by his will he bequeathed 10,000 of these shares to his wife.

At the date of his death the testator was indebted to the company in the sum of £24,424, and the question was whether as between the widow and the residuary legatees, the 10,000 shares bequeathed to her were liable to bear a proportionate part with the other shares registered in his name of the debt owing by the testator to the company.

There are two authorities to which a reference was made by Simonds, J., in his judgment.

The first is *Re General Exchange Bank* (1871), L.R. 6 Ch. 818. In that case, the articles of association of the L. & H. Bank provided that: "The Company shall have a first and paramount lien on all shares of any member for all moneys due to the company from him alone or jointly with any other person." The company went into liquidation and an arrangement was made by the liquidator to sell all the assets of the company to the G. E. Bank and that each shareholder in the L. & H. Bank should, if he so desired, have shares in the G. E. Bank allotted to him in place of his shares in the L. & H. Bank, but that any shareholder who did not desire to take such shares should be paid in cash by the G. E. Bank an agreed price for each share held in the L. & H. Bank. One of the shareholders in the L. & H. Bank was indebted to the L. & H. Bank for a sum exceeding £1,210 and elected to take cash in lieu of shares in the G. E. Bank. This sum of cash amounted to £1,210 and the question was whether that sum ought to be paid to the liquidators of the L. & H. Bank or to the assignees of the shareholder or his representatives. The contention was that the lien was not an equitable charge that extended to the money paid for the shares, and that any lien that the company had was lost when the shares were sold. It was held by the Court of Appeal that the provisions of the articles of association constituted an equitable charge on the shares and extended to the money which under the arrangement was payable for them.

Another case is *Everitt* v. *Automatic Weighing Machine Company* [1892] 3 Ch. 506. In that case a shareholder in a company was indebted to the company, whose articles of association provided that the company should have a lien upon the shares of a member for his debts to the company.

The shareholder agreed to sell the shares and called upon the company to transfer the benefit of its charge to a purchaser upon payment of the amount owing. This the shareholder claimed he had a right to do under s. 15 (1) of the Companies Act, 1881. It was contended that the lien of the company was not a charge within the meaning of s. 15 (1), and that the company was not bound to transfer the benefit thereof on being paid off to a nominee of the shareholder. North, J., held that the lien on the shares constituted an equitable charge and that s. 15 (1) of the Companies Act applied.

It appears to have been argued in *Re Turner* that s. 35 did not include any particular lien other than that for unpaid purchase money. Simonds, J., however, held that the section applied. His lordship said that it was clear from the cases to which I have referred that the lien of the company was an equitable charge, and decided that the testator's widow was liable to discharge a proportionate amount of the moneys owing to the company by the testator at the time of his death.

Landlord and Tenant Notebook.

The Importance of Keys.

It has been pointed out to me that when referring, in my recent article on "Distress as a Demand for Rent" (82 SOL. J. 148), to certain evidence given before the Inter-Departmental Committee on the Rent Restrictions Acts, I rather under-stated the witnesses' representation. I dealt with the position of tenants when distraining bailiffs armed with "blue papers" appeared soon after rent had become due, but not with the position when a bailiff would enter "by means of a master key," which, according to Pt. XII of the Report, is alleged to be "sometimes" the case.

I think it is fair to say that the question whether such entry is lawful is a novel one. I suggest that it can be approached in two ways, namely, from the point of view of the law as to mode of entry and from the point of view of the status of keys.

The law as to the mode of entry teems with border-line cases, but I would submit that general principles can be found in or deduced from some of them. Thus a bailiff may climb a garden wall, because climbing is not breaking and also because a garden wall is not part of the building in which he wishes to distrain; and he can go in at the door, "which is the most obvious way of entering": *Long* v. *Clarke* [1894] 1 Q.B. 119, C.A. But, dealing with the case of windows in *Nash* v. *Lucas* (1867), L.R. 2, Q.B. 590, Lush, J., while contrasting them with doors and saying "the door is the usual mode of access," went on "and a licence from the occupier to anyone to enter who has lawful business may be *implied from his leaving the door unfastened*." In *Ryan* v. *Shilcock* (1851), 7 Exch. 72, which I believe to be the only reported case in which a key is mentioned, entry was held lawful—but no key was actually used. The premises entered were a stable, the door of which was kept closed by a staple and padlock arrangement; but it was possible to draw out the staple without unlocking the padlock, and this was the usual procedure. Pollock, C.B., said: "We are of opinion that the landlord had authority by law to open the door in the ordinary way in which other persons can do it, when it is *left so as to be accessible* to all who have occasion to go into the premises." The headnote to the case declares that it was held that a distrainor may turn a key; this is certainly not expressed in the judgment, though the passage cited may imply it. The headnote appears to adopt part of the argument advanced by counsel in the case. What Pollock, C.B., did observe was that the word "shut" was ambiguous, as it might mean either that a door was shut so as to prevent it from opening of its own accord, or so as to prevent anyone from opening it without violence, or so as to prevent its being opened by a person with a key; if anything, this points to the view that a bailiff armed with a key supplied by the landlord commits an illegal act by using it for the purpose of effecting his entry, especially if the premises be a dwelling-house.

An examination of the nature and status of keys gives rise to another suggestion. There is ample authority for the proposition that keys are constructive realty. In *Bishop* v. *Elliott* (1855), 11 Exch. 112, which concerned the construction of a covenant to deliver up, Coleridge, J., said: "With respect to locks and keys . . . they are as much part of the house, and they go with it, as the doors . . . to which they may be attached or belong." And in *Hellawell* v. *Eastwood* (1851), 6 Exch. 295, dealing with a case of distress, Parke, B., said: "upon the same ground that they are parcel of the freehold, by construction of law, keys . . . concerning the realty, are not liable to be distrained." Admittedly the argument which may be founded upon this proposition is even more artificial than the law. It would proceed on these lines: when a landlord lets a house with a door provided with a lock and key(s), the key is, or keys are, part of the demised premises. There is no reason why this should not cover any keys made subsequently during the term, as they "belong to" the lock which they are made to fit. Possession and use of such keys without the tenant's consent are acts of trespass. But I must agree that it would be difficult to apply this reasoning to the case of a master-key!

As a symbol of possession, keys have also played an important part in the law of landlord and tenant, especially in relation to the question of surrender by operation of law. Delivery of keys to the landlord is frequently resorted to by tenants weary of their obligations, and the circumstances in which they are received determine the question whether the lease has come to an end. There have, however, been no developments of this branch of the law since the "Notebook" dealt with the subject (74 SOL. J. 724), and the position is still that acceptance of keys does not in itself effect a surrender by operation of law.

Possession of keys after the determination of a tenancy has also been a factor to which significance has been attached. In *Gray* v. *Bompas* (1862), 11 C.B. (N.S.) 520, the facts were that a yearly tenant gave a valid notice to quit. Some time after, the landlord, with his permission, showed prospective tenants over the property. The tenant moved out a few weeks before the notice expired, taking the key with him. A few days later the landlord borrowed the key in order to show another prospective tenant over the place, returning it the same evening. The tenant sent the key back two days after the notice expired and paid the last quarter's rent on the following day. The landlord sued for a quarter's rent on the footing that the tenant had held over. If the county court judge had not found for the plaintiff, I take it we should have heard no more of the matter. On appeal, the respondent's counsel had great difficulty in supporting the judgment. There was, indeed, no evidence that the retention of the key had not been purely inadvertent, and the only other fact that could be relied on was the failure to pay the last quarter's rent punctually. The court held that this was no evidence of an intention to continue the term.

The "decontrol by possession" provision of the Rent and Mortgage Interest Restrictions Act, 1923, s. 2 (2), is followed by a direction, in sub-s. (3): "the expression 'possession' shall be construed as meaning 'actual possession' and a landlord shall not be deemed to have come into possession by reason only of a change of tenancy made with his consent." This direction did not prove as clear as was perhaps hoped, but for present purposes all I need refer to is *Jewish Maternity Society's Trustees* v. *Garfinkle* (1926), 42 T.L.R. 589, in which it was held that the requirements were satisfied by ten days' possession of the keys. It should, of course, be noted that, as the landlords were trustees, possession, physical or symbolical, would be fiduciary.

Sir Louis Stanley Johnson, solicitor, of Coombe Warren, Kingston Hill, and Salisbury House, E.C., left £60,226, with net personalty £50,556.

Our County Court Letter.

HOUSEHOLDER'S LIABILITY FOR POSTMAN'S INJURY.

IN a recent case, at Oxford County Court (*Attorney-General* v. *Fowles*), the claim was for £9 4s., as damages for the loss of services of a postman through injuries sustained owing to the defective state of a manhole cover on the outside steps of the defendant's house. The case for the Crown was that, owing to the defendant's negligence, the concrete seating round the manhole was defective. The postman was delivering letters on the 14th September, 1937, when the manhole cover tipped up, and his foot went under the lid. This caused him to fall sideways and twist his ankle, although he had only stepped on the cover in the ordinary way. The accident was not due to his jumping on the cover, nor was he wearing rubber heels at the time as suggested by the defence. The case for the defence was that the same postman had delivered letters since May without accident, and the surface was dry at the time of the injury being sustained. The defendant and his five sons had walked over the cover every day for twenty years without any trouble, and it was denied that the condition of the cover was due to negligence. In order to stop some "play" or motion, the defendant had put some cement round the cover a few days before the accident. There was no need to touch it underneath, however, as the flange round the stone slab was in perfect condition. Corroborative evidence was given by a milkman, who had delivered daily at the house for twenty years without accident. Judgment was given for the defendant with costs.

THE LAW OF APPRENTICESHIP.

IN *Bunting* v. *Driscoll*, recently heard at Bridgend County Court, the claim was for the return of £10 paid as part premium for the apprenticeship of the plaintiff's step-daughter to the hairdressing business of the defendant. The plaintiff's case was that the usual period of apprenticeship was two years, in respect of which a premium of £10 was payable. The defendant, however, undertook that the plaintiff's step-daughter should be qualified in six months if a fee of £20 were paid for her training. The sum of £10 was accordingly paid on deposit, but the step-daughter was placed in the house portion of the premises, and had to wash dishes and peel potatoes. The defence was a denial that the apprentices were given housework, as there was every intention of carrying out the bargain. There had been no offer to return the premium, as alleged. His Honour Judge Clark Williams, K.C., gave judgment for the plaintiff with costs.

THE RECOVERY OF TITHE RENT-CHARGE.

IN *Tithe Redemption Commission* v. *Hodgson*, recently heard at Barnard Castle County Court, the claim was for £4 4s. 2d. in respect of three half-year's tithe rent-charge. The defence was that, as to £1 8s. 8d., the claim related to a half-year's payment due in September, 1935. The period allowed for collection was two years and one month, and proceedings were commenced on the 30th October, 1937, by letter addressed to the county court office at Barnard Castle. Such letters were re-addressed by the Post Office to Bishop Auckland, where the registrar had his office. The letter in question reached Bishop Auckland on the 5th November, 1937, so that it evidently had not reached Barnard Castle until the 4th November. By that time the claim was statute-barred, as the time had expired on the 31st October. The defendant first heard of the matter on the 5th November, when he was served with the summons. The amount due for the two subsequent half-years (£2 15s. 6d.) was then paid into court. His Honour Judge Gamon observed that the postal arrangements appeared to have been at fault. Judgment was given for the defendant with 5s. costs.

To-day and Yesterday.

Legal Calendar.

11 April.—In 1832 the King issued a proclamation that the 21st March should be observed as a day of fasting and humiliation on account of the cholera. The Political Union of the Working Classes issued a counter-proclamation that they would celebrate it by a distribution of bread and meat among the lower orders. On the day a mob of 25,000 people assembled in Finsbury Square, many of them in the greatest destitution. The work of the police in dispersing them led to violent collisions in which showers of mud, stones and bottles were thrown, many people being seriously injured. On the 11th April, a group of the rioters were tried at the Middlesex Sessions. Their sentences varied from two months to six months' hard labour.

12 April.—On the 12th April, 1858, there opened at the Old Bailey the trial of Simon Bernard, a French refugee charged with being an accessory before the fact to Orsini's attempt to assassinate Napoleon III outside the Paris Opera House. Three hand grenades, afterwards found to have been made in England, had been exploded beneath the Emperor's carriage and eight persons had been killed and 156 wounded. At that time feeling ran high against the upstart ruler of France and the verdict of acquittal which followed a week's hearing before Lord Chief Justice Campbell and three other judges was greeted with shouts of delight inside and outside the court.

13 April.—On the 13th April, 1714, Sir Alan Brodrick, the year after his appointment as Lord Chancellor of Ireland, became a peer as Baron Brodrick of Midleton.

14 April.—On the 14th April, 1635, Sir John Bramston was appointed Chief Justice of the King's Bench. The honour was inopportune, for the great Ship Money question was just then in the air, and the part which he was called upon by the King to play in that controversy eventually brought him under the shadow of impeachment by the House of Commons. The threat still lay upon him when Charles left his rebellious capital, and as he dared not follow his sovereign to York his appointment was revoked in October, 1642. He lived in retirement under the Commonwealth and died in 1654.

15 April.—On the 15th April, 1833, the gaol at Tain in Ross caught fire early in the morning. At first there was some delay in fetching the gaolers to the scene. Then, in the confusion, the right keys could not be found. Owing to the waste of time a part of the building was cut off by the flames, with the result that two debtors who were confined there and the wife of one of them who had come to visit him were burned to death, the helpless spectators being obliged to listen with horror to their cries.

16 April.—Sir Gilbert Elliot, Lord Minto, died suddenly on the 16th April, 1766, three years after his appointment as Lord Justice Clerk. Though he was not particularly eminent as a judge he had several more graceful accomplishments than mere legal learning for he was an excellent musician and well acquainted with Italian literature. He was a member of the "committee of taste" for the improvement of Edinburgh and also a keen and successful agriculturalist.

17 April.—On the 17th April, 1820, Arthur Thistlewood was tried at the Old Bailey for high treason. His crime was the spectacular Cato Street conspiracy to massacre the entire Cabinet at dinner at Lord Harrowby's house in Grosvenor Square, and launch a revolution. The police had broken in upon the plotters when they were in the very act of arming. After a three days' hearing before Lord Chief Justice Abbott, Thistlewood was found guilty. He and four others were hanged and afterwards decapitated.

The Week's Personality.

Lord Midleton's career was one of ups and downs. Early in life he reaped the reward of active support of William of Orange by being appointed King's Serjeant, at the age of thirty. Five years later he rose to be Solicitor-General for Ireland but he eventually lost this office because his liberal views on the subject of religious toleration had led him to oppose the Sacramental Test Act. Soon, however, he was back in office as a Law Officer, this time as Attorney-General for Ireland. In 1710 he climbed to judicial dignity as Chief Justice of the Irish Queen's Bench, but his attachment to the principles of the Whig Revolution which were then somewhat unfashionable, brought him down again in the following year. He resumed political activity, represented Cork in the Irish Parliament, and acted as Speaker till 1714. The accession of George I, which he had actively promoted, brought him the prize of the Irish Chancellorship and a peerage. In the year he became Chancellor he achieved the remarkable plurality of being elected to the British House of Commons as member for Midhurst, which he continued to represent there till his death, in 1728. His chief fault was opiniativeness; and sterling honesty and sincere patriotism his principal virtues.

"Dames du Temps Jadis."

Mr. Henry Dymond, of the Department of the Official Solicitor, at the Royal Courts of Justice, has just completed fifty years' service there, and a newspaper reporter has marked the occasion by collecting from him some comparisons of past and present. One interesting difference that he noted was the disappearance of the group of ingenious ladies who, as litigants in person, used to harass Her Majesty's judges in case after case: Mrs. Cathcart, Mrs. Druce, Mrs. Thompson, and, above all, Mrs. Weldon. The last-named lady was always objecting to the judges who tried her cases. On one occasion, Lord Esher assured her that the judge with whom she would have to deal was a capital lawyer and would try her case very nicely without a jury. Nevertheless she demurred and pressed for a jury, declaring: "Mr. Justice —— is all very well as to law, but, my lord (and in this respect I am also in a difficulty in your lordship's court) my case requires so much commonsense." Lord Esher was so delighted with this point that, though he dismissed the lady's application, it was without costs.

A Great Lady Litigant.

It was Mrs. Weldon who on another occasion paid Lord Esher a flattering compliment. This time she was appealing against a decision of the aged but alert Vice-Chancellor Bacon, one of her grounds being that he was too old to understand her case properly. Lord Esher tried to deal with this point saying: "The last time you were here you complained that your case had been tried by my brother Bowen and you said he was only a bit of a boy and could not do you justice. Now you come here and say that my brother Bacon was too old. What age do you want the judge to be?" "Your age," replied Mrs. Weldon promptly, fixing her eyes on the handsome countenance of the Master of the Rolls. I forget which of the valiant band of lady litigants it was who, having very ably conducted her own case against an imposing array of leaders, submitted herself to cross-examination and was asked amid laughter: "Tell me, madam, do you expect to win this case?" "No," she replied, glancing at the ranks arrayed against her, "but I hope to." And she did.

Mr. Lewin Bamfield Carslake, solicitor, of Wimbledon and Old Broad Street, E.C., left estate of the gross value of £95,161, with net personalty £88,903. He left £200 to augment any fund he and his wife had established for a prize for Naval Observers in memory of his late son; and on the death of his wife £200 to the Solicitors' Benevolent Association and £100 to Wimbledon Hospital.

Obituary.

HIS HONOUR A. PARSONS, K.C.

His Honour Albert Parsons, K.C., formerly Judge of County Courts on Circuit 54 (Somersetshire, etc.), died at Bath on Thursday, 7th April, at the age of seventy-three. He was educated at Bedford and London University, and was called to the Bar by the Middle Temple in 1891. He practised on the Western and South Wales Circuits, and in 1915 he became Recorder of Merthyr Tydfil. He was appointed Judge of County Courts on Circuit 7 (Cheshire, etc.) in 1917, being transferred to Circuit 54 in 1922. He resigned last year on account of ill-health.

MR. E. BLACKBURN.

Mr. Edward Blackburn, solicitor, senior partner in the firm of Messrs. Blackburn & Main, of Carlisle and Haltwhistle, died on Friday, 1st April, at the age of eighty-three. Mr. Blackburn, who was admitted a solicitor in 1883, was Registrar of Haltwhistle and Alston County Courts, and also Clerk to the Magistrates.

MR. A. G. HUGHES.

Mr. Allan Gibson Hughes, solicitor, head of the firm of Messrs. Harry W. Hughes & Son, of Shrewsbury, died on Saturday, 9th April, at the age of forty-nine. Mr. Hughes, who was admitted a solicitor in 1912, was Registrar of Shrewsbury and Whitchurch County Courts, District Registrar of the High Court, and Clerk to the Magistrates.

Reviews.

Principles of the English Law of Contract and of Agency in its Relation to Contract. By The Right Honourable Sir WILLIAM R. ANSON, Bart., D.C.L., of the Inner Temple, Barrister-at-Law, sometime Warden of All Souls College, Oxford. Eighteenth Edition. 1937. By JOHN C. MILES, Kt., M.A., B.C.L., of the Inner Temple, Barrister-at-Law, Warden of Merton College, Oxford, and J. L. BRIERLY, D.C.L., of Lincoln's Inn, Barrister-at-Law, Fellow of All Souls College, Oxford. Demy 8vo. pp. xl and (with Index) 447. London and Oxford: Humphrey Milford; Oxford University Press. 15s. net.

A new edition of this standard work is always sure of a welcome from students and practitioners alike by reason of its scholarly exactness and full treatment of the principles of the law of contract. In their preface the learned editors speak approvingly of the Law Reform Acts of 1934 and 1935, and express the hope, which all will share, that Lord Sankey's initiative in appointing the Law Revision Committee will bear still further fruit in the removal of anomalies in our legal system. As they truly say, their task in editing a book such as this is calculated to disturb any complacency an English lawyer may have been inclined to feel regarding the present state of the law of contracts. To Sir William Anson, and those who followed in his steps in the preparation of successive editions of his classic, students are under obligations for which it is to be hoped they are duly grateful. It is interesting to be reminded, as we are on pages 53 *et seq.*, that the doctrine of the universal need for consideration in contracts not under seal which Lord Mansfield sought in vain to relegate into the limbo of bad law, is likely to receive its quietus if the Law Revision Committee's recommendations are given legislative effect as it is to be hoped they will. An important feature of this edition is a consideration of the effect of the much discussed decision of the House of Lords in *Bell* v. *Lever Brothers, Ltd.* [1932] A.C. 161—no very easy task in view of the divergence of judicial opinion and of the varying reasons given by the majority. We have noted a tiny typographical slip in the reference to *Gibbons* v. *Proctor*, both on p. 16 and in the Index of Cases, where by the dropping of a figure it is cited as "4 L.T. 594" instead of "64 L.T. 594," but considering that the decision in that case has been rejected by all commentators upon it this is a matter of small moment.

Crime and the Community. By LEO PAGE, of the Inner Temple and the South-Eastern Circuit, Barrister-at-Law. 1938. Demy 8vo. pp. (with Index) 394. London: Faber and Faber, Ltd. 12s. 6d. net.

This is a well thought out and admirably documented account of the theory and practice of punishment. Unlike many of the other works on the same subject to which the public has been treated in the last few years, it is completely devoid of sentimentality, but what it lacks in this direction it amply makes up in depth of sympathy and painstaking personal effort to obtain all the most reliable information and figures. The author rightly draws attention to the difficulty and delicacy of the task of those who have to decide what treatment to mete out to criminals, and points out that a judge should be familiar with the details of prison life, else he is "in the position of a physician who prescribes a medicine of which he is ignorant of the constituent parts." Unfortunately, as the author observes, few judges or magistrates are as completely equipped in this respect as they ought to be. With many of the author's more decisive views advocates in the criminal courts will readily agree, particularly with regard to the inefficacy and positive ill-effects of short sentences. During 1935 over 10,000 persons were sent to prison for periods of not more than fourteen days. This excellent work is a mine of information and penetrating comment on and criticism of almost every aspect of the subject with which it deals, and no judge or magistrate who is concerned with the administration of criminal justice should fail to study it carefully.

Books Received.

The County Court Litigant. By R. WYNNE FRAZIER, of Gray's Inn and the Midland Circuit, Barrister-at-Law. 1938. Demy 8vo. pp. xix and (with Index) 208. London: The Solicitors' Law Stationery Society, Ltd. 17s. 6d. net.

The Temple of the Nineties. By GILCHRIST ALEXANDER, a former Judge of the High Court of Tanganyika. 1938. Demy 8vo. pp. 284. London, Edinburgh and Glasgow: William Hodge & Co., Ltd. 10s. 6d. net.

The Life of Lord Darling. By DEREK WALKER-SMITH. 1938. Royal 8vo. pp. xi and (with Index) 316. London: Cassell & Co., Ltd. 18s. net.

The New People's Library. Vol. X.: Civil Liberties. By W. H. THOMPSON. 1938. Crown 8vo. pp. 96. London: Victor Gollancz, Ltd. Price 1s. paper; 1s. 6d. cloth.

Barnett House Papers. No. 21.—Treatment of Crime. By Sir ALEXANDER MAXWELL, K.B.E., C.B. 1938. Demy 8vo. pp. 24. London: Humphrey Milford, Oxford University Press. Price 1s.

The Strange Case of Major Vernon. 1938. London: The National Council for Civil Liberties. Price 3d.

The Railway Stockholder. Vol. IV. No. 3. April, 1938. London: The British Railway Stockholders Union, Ltd. Price 2d.

Aliunde. Translations and Verses. By Sir ALEXANDER LAWRENCE. 1938. Demy 8vo. pp. vii and 118. London: Humphrey Milford, Oxford University Press. 5s. net.

Company Law. By D. F. DE L'HOSTE RANKING, M.A., LL.D., and ERNEST EVAN SPICER, F.C.A. Seventh Edition, 1938, by H. A. R. J. WILSON, F.C.A., F.S.A.A. Royal 8vo. pp. xxxii and (with Index) 472. London: H.F.L. (Publishers) Ltd. 10s. net.

Notes of Cases.

Judicial Committee of the Privy Council.

De Bueger *v.* J. Ballantyne & Co., Ltd.

Lord Wright, Lord Romer, Sir Lancelot Sanderson, Sir Sidney Rowlatt and Sir George Rankin. 14th February, 1938.

NEW ZEALAND—CONTRACT FOR SERVICES IN NEW ZEALAND ENTERED INTO IN LONDON—SALARY EXPRESSED IN STERLING—WHETHER ENGLISH CURRENCY INTENDED.

Appeal from a majority judgment of the Court of Appeal of New Zealand, reversing a judgment of the Supreme Court of New Zealand in favour of the plaintiff, De Bueger.

The appellant was employed by the respondents under an agreement made in London, and dated the 2nd August, 1932. to serve them as a tailor cutter in New Zealand at a salary of £700 sterling a year. The question at issue was whether the sum stipulated meant £700 in English currency to be paid in New Zealand currency or £700 in New Zealand currency. In the contract the respondents were described as a company incorporated in New Zealand, whose London office was in the City of London, and the appellant was also described as of an address in London. By the agreement the appellant was to proceed to New Zealand, there to be employed by the respondents. *Cur. adv. vult.*

LORD WRIGHT, giving the judgment of the Board, said that, in their lordships' opinion, the word " sterling " was added in the agreement in order to define what means of discharge—that was, what currency—was being stipulated. The necessity for adding the word was simply because the " unit of account," the word " pound," or the symbol £, were the same both in England and in New Zealand. If the word " sterling " had not been inserted, the salary would have been payable in New Zealand currency, that being the place of payment, on the principles laid down in the *Adelaide Case* [1934] A.C. 122. In this agreement the word " sterling " was an express term intended to exclude, and in fact excluding, the *primâ facie* rule according to which New Zealand pounds would be meant, as being the currency of the place of payment. It was impossible to regard the word as indicating simply legal tender at the place of payment, New Zealand. It was used in that sense habitually in exchange quotations and in documents dealing with international transactions in which it was necessary to define the currency intended, including transactions with the Dominions. The contrast between sterling (*sc.*, British sterling or currency) and dominion or colonial currency was familiar. Having regard to the place where, and the parties between whom, the contract was made, their lordships were satisfied that the appellant's claim was well founded. It was not to be forgotten that, in August, 1932, exchange questions were matters of business moment. The appellant, who was going to New Zealand, might naturally desire to be assured that he would be paid in the currency with which he was familiar. Their lordships did not desire to express any opinion on the question whether the construction of the agreement would have been the same if it had been made and entered into in New Zealand. The appeal should be dismissed.

COUNSEL: *J. D. Casswell* and *G. Lloyd*, for the appellant; *Alexander Ross* and *Paul Tyrie*, for the respondents.

SOLICITORS: *Lloyd & Lloyd; Wray, Smith & Halford.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Bosch and Another *v.* Perpetual Trustee Company, Limited and Others.

Lord Wright, Lord Romer, Sir Sidney Rowlatt and Sir George Rankin. 14th February, 1938.

NEW SOUTH WALES—TESTATOR—ADEQUATE PROVISION FOR PROPER MAINTENANCE OF DEPENDANTS—DISCRETION OF COURT—TESTATOR'S FAMILY MAINTENANCE AND GUARDIANSHIP OF INFANTS ACT OF NEW SOUTH WALES, 1916, s. 3 (1).

Appeal from an order of the Supreme Court of New South Wales (in equity).

The appellants were the infant sons, aged seven and four years respectively, of a testator who died leaving an estate of £257,000 and by his will, *inter alia*, left the appellants £15,000 each at twenty-five, with certain forfeiture conditions. The application out of which this appeal arose was that that sum should be increased to £25,000 each. The respondents, the Perpetual Trustee Company, Limited, did not appear on the appeal. The testator's widow, a co-trustee, was a respondent but did not, subject to certain reservations, object to the application. The other respondent was the University of Sydney, which was the testator's residuary legatee. It was stated on the hearing of the appeal that there was pending before the Legislature of this country a Bill which was intended to introduce into English law a similar legislative provision. Section 3 (1) of the Testator's Family Maintenance and Guardianship of Infants Act, 1916, of New South Wales, provided: " If any person . . . dying or having died since October 7, 1915, disposes of or has disposed of his property . . . by will in such a manner that the widow, husband, or children of such person . . . are left without adequate provision for their proper maintenance, education, or advancement in life . . . the Court may . . . taking into consideration all the circumstances of the case . . . order that such provision for such maintenance, education, and advancement as the Court thinks fit shall be made out of the estate of the testator . . ."

LORD ROMER, delivering the judgment of the Board, said that the question on what principles the court was to act in determining what constituted proper maintenance had been discussed in several cases to which their lordships' attention had been directed. They were for the most part decisions of the New Zealand Courts. New South Wales was not the only State in Australia which had made statutory provisions of the nature now in question. New Zealand appeared to have been the pioneer. Of the cases cited their lordships desired particularly to refer to *Allardice* v. *Allardice* [1910] 29 N.Z. L.R. 959, a decision of the Court of Appeal of New Zealand, and to the judgment of Stout, C.J., at p. 970. With those observations their lordships were in agreement. The amount to be provided was not to be measured solely by the need of maintenance. It would be so if the court were concerned merely with adequacy. But the court had to consider what was proper maintenance, and therefore the property left by the testator had to be taken into consideration. So, too, a material consideration was the age of children. If a son was of mature or nearly mature age, his needs, both for the present and the future, could be estimated without much difficulty. In the case, however, of a son of tender age, although his immediate needs could be readily ascertained, it was extraordinarily difficult even to guess what his needs might be in the future. Where, therefore, the testator's estate was a large one the court would be justified in such a case in making provision to meet contingencies which might have to be disregarded where the estate was small. The court must place itself in the position of the testator and consider what he ought to have done in all the circumstances of the case, treating the testator for that purpose as a wise and just, rather than a fond and foolish, husband or father. His lordship referred to the judgment of Salmond, J., in *In re Allen* (1922) 41 N.Z.L.R. 218, at p. 220: Nicholas, J.'s view of the Act was that, whatever might be the circumstances of the case, no young man in possession of a sum of £15,000 could bring himself within the Act, and that the fact that a young man was unable, in view of the means available for his maintenance, education and advancement, to attend one of the English universities, was in all circumstances a wholly irrelevant

consideration. Their lordships were unable to take that view of the Act. It could not be said of any particular sum, such as £15,000 for instance, that it afforded proper maintenance, education and advancement in all conceivable circumstances. The subsection in question contained no other limitation than was involved by the words "proper" and "all the circumstances of the case," and their lordships would strongly deprecate the introduction into the subsection of any limitation by reference to a particular figure, or any limitation by reference to the kind of education for which provision should be made. In their lordships' opinion, there should be provided for each appellant an additional £10,000 out of the residuary estate. The appeal would accordingly be allowed.

COUNSEL: *H. B. Vaisey*, K.C., and *W. T. Elverston*, for the appellants; *J. N. Gray*, for Mrs. Bosch; *Eversheд*, K.C., and *A. C. Nesbitt*, for the University of Sydney.

SOLICITORS: *Elvy Robb & Co.*; *Light & Fulton*.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Court of Appeal.

Lloyds Bank Ltd. *v.* Bank of America National Trust and Saving Association.

Greene, M.R., Scott and MacKinnon, L.JJ.
9th and 10th March, 1938.

PRINCIPAL AND AGENT—BILLS OF LADING—PLEDGED TO BANK BY COMPANY—RETURNED TO COMPANY ON TRUST TO SELL GOODS AND PAY PROCEEDS TO BANK—PLEDGED TO ANOTHER BANK—WHETHER GOOD TITLE PASSED—FACTORS ACT, 1889 (52 & 53 Vict., c. 45), s. 2 (1).

Appeal from a decision of Porter, J. (81 SOL. J. 612).

A company, Strauss & Co., Ltd., pledged certain bills of lading to the plaintiff bank as security for advances. The plaintiffs, after receiving the bills of lading, handed them back to the company at their request so that they or the goods represented by them might be sold and the proceeds applied as stipulated in the trust receipts. These receipts stipulated for the handing over of the documents of title to the company to hold on trust for the plaintiffs, and to sell the goods and hold the proceeds in trust for the plaintiffs, or hold the whole of the goods in trust and return them. Instead, however, of selling the goods and holding the proceeds in trust for the plaintiffs, the company pledged the documents with the defendant bank to secure other advances. Before either the plaintiffs or the defendants had been repaid the company became insolvent. It was admitted that the defendants had acted in good faith and had no reason for suspecting that the transactions between themselves and the company were not in order. In a claim by the plaintiffs to recover from the defendants the documents and the goods pledged, Porter, J., gave judgment for the defendants.

GREENE, M.R., dismissing the plaintiffs' appeal, said that the first question was whether the company were mercantile agents in possession of these documents with the consent of the owner. The Factors Act, 1889, s. 2 (1), contemplated that the person it described as the "owner" was the person who would be in a position to give express authority with regard to the dealing in question. It often happened that the incidents and rights of ownership were divided among two or more hands. Then the acts contemplated by the section could not be authorised, save by all. Those persons together constituted the owner. If it was with the consent of those persons that the mercantile agent was in possession of the documents, he was in possession "with the consent of the owner" within the meaning of the section. If the bank and the company had both consented to hand the documents to a broker, he would have been in possession "with the consent of the owner" within s. 2. There might be a case where the mercantile agent had, in combination with someone else, the ownership of the goods, and where he was allowed to have possession of them with the consent of the other person interested for the purpose of selling, it could not be said that the section did not apply. Further, on the particular documents of this case, the bank alone was the owner for the purposes of s. 2, so that, apart from the ground previously stated, the company were in possession of the goods "with the consent of the owner." It had been argued that the company had the general property in the goods, that, on the power of disposition which that general property would ordinarily carry, there was a clog (i.e., the bank's right as pledgee), and that, by virtue of the transaction when the shipping documents were released and the trust receipt taken, the bank removed that clog, leaving the company's general property free from it, so that the company were in possession without any right at all in the bank and dealt with the documents as owners. But it was only by virtue of the trust receipt that the company obtained possession of the documents, and the terms therein laid down constituted them trustees for the landing, storage and sale of the merchandise. It contained an undertaking that the proceeds of sale would be received as trustees for the bank and that any unsold balance of merchandise would be returned to the bank. The result was that they were entitled to sell as trust agents for the bank. Save in that capacity, they could have had no title to do the things the document contemplated they should do. This was a clear case of an authority given to a mercantile agent employed in that capacity for that purpose within the meaning of s. 2.

SCOTT and MACKINNON, L.JJ., agreed.

COUNSEL: *Sir William Jowitt*, K.C., and *J. Wylie*; *Sir Stafford Cripps*, K.C., and *H. Robertson*.

SOLICITORS: *Allen & Overy*; *Slaughter & May*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Philadelphia National Bank *v.* Price.

Greene, M.R., Scott and MacKinnon, L.JJ.
23rd March, 1938.

INSURANCE—BANK COVERED AGAINST LOSSES CAUSED BY LOANS ON INVALID DOCUMENTS—WHETHER DAY-TO-DAY LOANS AGGREGABLE OR TO BE TREATED AS SEPARATE LOSSES.

Appeal from a decision of Porter, J. (81 SOL. J. 686).

The defendant was one of those who insured the plaintiffs in respect of certain losses under two policies. By the first policy the defendant agreed to insure the plaintiffs for the defendant's proportion of $175,000 for twelve months for and against all losses and damages in excess of $25,000 which the plaintiffs might during that period discover that they had sustained by reason of their having during the ordinary course of business in good faith taken, received or otherwise, in any manner or for any purpose whatsoever, come into possession of, transferred, delivered, made advances or loans against or otherwise acted upon any documents whatsoever which might prove (A) to have been forged in whole or in part or invalid, and/or (B) to have other want of, or defect in title. By the second policy the defendant agreed to insure the plaintiffs in identical terms for the defendant's proportion of $300,000 for losses in excess of $200,000. The plaintiffs claimed that during the period of cover, they discovered that they had sustained loss through advancing money against documents which proved invalid, the loss being caused through the frauds of a certain coal merchant in America and of a company controlled by him. The coal merchant and the company had had a revolving credit with a bank which had been amalgamated with the plaintiffs in 1926. Another bank had been absorbed in 1928, and, after those amalgamations, the credit granted to the coal merchant and the company was continued on the same terms. The policies respectively contained a term that the insurance was only to pay claims for the excess of $25,000

on $200,000, ultimate net loss by each and every loss on occurrence. Relying on those clauses, the defendant denied that the ultimate loss by any single occurrence had reached the required minimum and contended that the policy looked to individual losses and not to the contract under which those losses took place, and that each advance of money was a separate transaction. The plaintiffs contended that they had one arrangement with the coal merchant and the company and that many transactions under that one arrangement resulted in a deficit which constituted one loss. PORTER, J., gave judgment for the defendant.

GREENE, M.R., dismissing the plaintiffs' appeal, said that the general arrangement between the merchant and the bank was that the bank were to make advances up to a stated limit against which he was to provide duplicate invoices of goods sold to customers and to enter into a promissory note for the amount advanced. The same happened in the case of the company. The loans to the merchant and those to the company must be considered separately. The transactions were carried out by the merchant sending the bank almost daily two letters, one containing invoices and promissory notes and the other cheques for the amount of invoices which the customers had paid. The bank would then debit his loan account with the advance made and credit his current account with that amount. They credited the cheques received to his loan account, reducing the total loans. There was no running overdraft on which he could draw as he pleased. The overdraft limit was only allowed to rise against invoices and promissory notes. It was like a series of permitted overdrafts, each permitted on the production of the relevant documents. At an early stage the merchant embarked on a course of fraud by sending the bank what might be called forged invoices. The same course of dealing happened as between the company and the bank. The bank contended that there had been a single loss consisting of the balance standing to the debit of the customer's account. That was the wrong approach to the matter. The bank made several advances against the documents produced on each occasion and as a result of separate requests. The advances must be considered separately.

SCOTT and MACKINNON, L.JJ., agreed.

COUNSEL: *Miller*, K.C., and *C. Stevenson*; *Willink*, K.C., and *W. McNair*.

SOLICITORS: *Parker, Garrett & Co.*; *Hair & Co.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Appeals from County Courts.

Rees *v.* Powell Duffryn Associated Collieries Ltd.

Slesser and Scott, L.JJ., and Farwell, J.
14th February, 1938.

WORKMEN'S COMPENSATION—INDUSTRIAL DISEASE—MINERS' NYSTAGMUS—WORKMAN FIT FOR WORK—LIABLE TO RELAPSE—WHETHER STILL INCAPACITATED.

Appeal from Pontypridd County Court.

In July, 1936, a workman was certified under s. 43 of the Workmen's Compensation Act, 1925, to be suffering from miners' nystagmus, an industrial disease, and compensation was paid to him on the basis of partial incapacity. In November, 1936, the employers applied under s. 19 for examination of the man by a medical referee, who reported that he had wholly recovered and was fit for his ordinary work, but that if he did so he would be very liable to a relapse. He added that the incapacity had ceased. The workman having applied for arbitration, His Honour Judge Williams, K.C., asked the medical referee whether the "relapse" mentioned would be a recrudescence of the former attack of the disease or a fresh attack. The answer was that it would be a recrudescence. The judge also asked how soon it was to be expected that the relapse would occur after the resumption of underground work. The answer was that it would be six months. The judge held that the man was still incapacitated.

SLESSER, L.J., dismissing the employers' appeal, said that *Starkey* v. *Clayton & Sons*, 133 L.T. 612, was dealt with on the basis that, if the man had been suffering from a disease and there was the probability of recurrence, the judge might give compensation on the basis of partial incapacity, because, though at the moment he was able to pursue his occupation, the probability of a recurrence was such that in fact the incapacity continued, e.g., the evidence might show that within almost a negligibly short period the man would be again incapacitated. On the other hand, the period of employment before a recurrence need be expected might be so great as to justify the judge in concluding that the man might be fairly held to have recovered his capacity. It was a question of fact and degree for the judge whether the estimate of the man's further incapacity by reason of recrudescence was so unpropitious that it was almost certain that within a short time he would be again incapacitated, or whether the possibility of recurrence was so vague or uncertain that he might fairly be regarded as having his capacity for his old work. *McNicholas* v. *West Leigh Colliery Co. Ltd.*, 26 B.W.C.C. 29, was not inconsistent with *Starkey's Case, supra*. The judge had to consider the man's present condition, whether or not he was incapacitated. In doing so he might take into consideration the fact that, though at the time of the arbitration he was fit for work, there was a danger of recurrence. The question whether that recurrence was so near as to produce a present incapacity, or whether it was remote and uncertain, was a question of degree and fact.

SCOTT, L.J., and FARWELL, J., agreed.

COUNSEL: *J. Pugh*; *Fyfe*, K.C., and *Joshua Davies*.

SOLICITORS: *Smith, Rundell, Dods & Bockett*, for *Morgan, Bruce & Nicholas*, of Pontypridd; *Furniss, Stephen & Co.*, for *Arthur J. Prosser*, of Cardiff.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Trim *v.* Sturminster Rural District Council.

Greer, Slesser and MacKinnon, L.JJ. 17th March, 1938.

HOUSING—DWELLING-HOUSE—DEMOLITION ORDER—LAND USUALLY OCCUPIED WITH HOUSE—WHETHER APPURTENANT—HOUSING ACT, 1936 (26 Geo. 5 and 1 Edw. 8, c. 51), ss. 11, 188.

Appeal from Blandford County Court.

In June, 1937, the Council made an order under the Housing Act, 1936, s. 11, for the demolition of a small dwelling-house of about six rooms on the ground that, being a type suitable for occupation by persons of the working-classes, it was not fit for human habitation. Together with certain farm buildings (including cow-stalls capable of accommodating a dozen cows) and also 10 acres of grassland, it had for several years been let on a yearly tenancy at a rent of £30 a year to a person carrying on the business of a poultry farmer. The owners appealed to the county court, the house being at the time of the appeal unoccupied. His Honour Judge Cave set aside the demolition order, holding that the house was not of a type suitable for occupation by persons of the working-classes on the ground that no person of the working-classes would take the house and appurtenances on an annual tenancy or be accepted as tenant.

SLESSER, L.J., allowing the council's appeal, said that the question arose on the definition of "house" in the Housing Act, 1936, s. 188. The word was defined as including "any yard, garden, out-houses and appurtenances belonging thereto or usually enjoyed therewith." The word "appurtenances" had a certain limited meaning. In a demise it would pass the house, orchard, yard, curtilage and gardens,

but not land (*Bryan* v. *Wetherhead*, Cro. Car. 17). In certain cases it might pass incorporeal hereditaments, but there was no case in which it was held to include land not falling within the curtilage of the house itself. It was wrong to hold the 10 acres of grassland as being included in "appurtenances." Exactly how much of the adjacent land should be included in the word depended on the facts of the particular case, and must be decided by the judge. But he must confine his consideration, in taking account of whether the house was or was not suitable for occupation by persons of the working-classes, only to such matters as would on the face of them be something less than the whole 10 acres. The case must go back to the judge to decide on a proper consideration of the subject-matter thus indicated whether or not the demolition order was properly made.

GREER and MACKINNON, L.JJ., agreed.

COUNSEL: *Heathcote-Williams; John Henderson.*

SOLICITORS: *Lovell, Son & Pitfield*, for *W. H. Creech*, of Sturminster-Newton; *Butt & Bowyer*, for *Rutter & Rutter*, of Shaftesbury.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Jones *v.* **Bates.**

Slesser and Scott, L.JJ., and Farwell, J.
21st March, 1938.

HIGHWAYS—RIGHT OF WAY—USER "AS OF RIGHT"—MEANING—RIGHTS OF WAY ACT, 1932 (22 & 23 Geo. 5, c. 45) s. 1.

Appeal from Hastings County Court.

The plaintiff brought an action in respect of an alleged trespass, the question being whether there was a right of way over her farm. The learned county court judge gave judgment for damages and granted an injunction holding that, though there was a defined way across the farm, the evidence did not establish that there was a public right of way within the Rights of Way Act, 1932.

SLESSER, L.J., allowing the defendant's appeal, said that a notional dedication to be presumed under s. 1 (1) of the Act had been relied on. Those who claimed that the path should be deemed to have been dedicated as a highway had to show that it had been enjoyed by the public as of right without interruption for twenty years. The judge did not think there was proof of such user, holding that what was established was in substance a mere trickle of user, and that the people who used the path, whether or not they were to be taken to be the public, did not use the path "as of right." In *Hue* v. *Whiteley* [1929] 1 Ch. 440, that expression was defined as meaning that the users were "believing themselves as exercising a public right to pass from one highway to another." That was the meaning of the words in s. 1 (1). The evidence of past owners or occupiers of the farm and adjoining farms was that they let the public use the path because they thought there was a right of way. His lordship could not understand how the judge, having accepted that evidence, came to the conclusion that the limited class to which he referred were merely allowed on sufferance to cross the farm, not as of right, but by consent. The existence of user by the public "as of right" under the Act was, like the fact or inference of dedication, a question for the tribunal of fact, but the judge had not properly directed his mind to the problem nor, if he believed the evidence, was there any evidence from which he could infer that the passage of people whom he found to have used the path was merely by consent.

SCOTT, L.J., agreed, and FARWELL, J., dissented, holding that the question was one of fact for the judge.

COUNSEL: *Steer; Evershed*, K.C., *Neve* and *J. Llewellyn.*

SOLICITORS: *Blyth, Dutton, Hartley & Blyth*, for *Menneer, Idle, Brackett & Williams*, of St. Leonards-on-Sea; *Skelton & Rust*, for *Charles W. Buckwell*, of Battle, Sussex.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

High Court—Chancery Division.

Beaumont *v.* **Beaumont.**

Crossman, J. 4th March, 1938.

INFANT — CUSTODY — PROCEEDINGS — COURT OF SUMMARY JURISDICTION—APPLICATION BY ONE PARTY TO REMOVE PROCEEDINGS TO CHANCERY DIVISION—GUARDIANSHIP OF INFANTS ACT, 1886 (49 & 50 Vict., c. 27), ss. 5, 9, 10—GUARDIANSHIP OF INFANTS ACT, 1925 (15 & 16 Geo. 5, c. 45), s. 7. R.S.C. Ord. LVA, r. 5.

The mother of an infant commenced in the Hove Petty Sessional Court of Summary Jurisdiction proceedings relating to its custody under the Guardianship of Infants Act, 1886, s. 5, as amended by the Guardianship of Infants Act, 1925, s. 7 (1). The respondent, the father, now made an *ex parte* application to remove the proceedings to the Chancery Division of the High Court.

CROSSMAN, J., referred to ss. 5, 9, 10 of the 1886 Act, and said that the contention of the applicant in this court that the effect of s. 7 (1) of the 1925 Act was to make s. 10 of the 1886 Act applicable to an application to a court of summary jurisdiction and that he was entitled to have proceedings in the petty sessional court removed to the High Court could not be upheld. The effect of s. 7 (1) was to extend the interpretation of the expression "the Court," in s. 9 of the 1886 Act, so as to include a court of summary jurisdiction, but not to extend the meaning of "county court" in s. 10, so as to include a court of summary jurisdiction. His lordship referred to R.S.C. Ord. LVA, r. 5, and said that a party to such proceedings as these could not insist on their being removed from the court of summary jurisdiction to the High Court.

COUNSEL: *Fearnley-Whittingstall.*

SOLICITORS: *C. A. Russ & Son.*

[21st March. The father (represented by *Healy*, K.C., *Fearnley-Whittingstall* and *D. O'Malley*) having appealed, it was submitted that the Court of Chancery had an inherent jurisdiction to remove the proceedings from the Petty Sessional Court. The Court of Appeal (Greene, M.R., MacKinnon and Clauson, L.JJ.) refused to allow the appellant to rely on this contention on the ground that he was keeping the infant out of the jurisdiction and the appeal was dismissed.]

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Johnstone *v.* **Bernard Jones Publications Ltd.**

Morton, J. 9th March, 1938.

COPYRIGHT—FOOTBALL POOL SYSTEMS—TABLE FROM BOOKLET—ARTICLE CONTAINING TABLE—AUTHOR NOT REFERRED TO—WHETHER PUBLICATION "FAIR DEALING"—COPYRIGHT ACT (1 & 2 Geo. 5, c. 43), s. 2 (1) (i).

The plaintiff was the author of a booklet entitled "Systematic Football Betting," containing tables to enable competitors in football pools to obtain good results. He alleged that in a weekly paper entitled "Football Forecasts," published by the defendants, a letter signed by one R. I. H. had been printed, reproducing a substantial part of one of the tables in his book. In this action he claimed damages for alleged infringement of his copyright. The defendants pleaded (*inter alia*) that if the table was reproduced, it was reproduced for the purposes of criticism and review so as to make its use "fair dealing" within s. 2 (1) (i) of the Copyright Act, 1911.

MORTON, J., in giving judgment, said that the word "substantial" did not denote only bulk. Though the table was only a small part of the booklet, it was a part of value for the purposes for which the booklet was written. On the evidence the reduced permutation table in the article was a reproduction in substance of the plaintiff's work. The plaintiff had argued that the article was not

"fair dealing," because an article could not be fair dealing with a work unless that work was attributed to its author. But it was not necessary for the author to be named in terms. There was no reason to import such a limitation into the section. This article was "fair dealing" with the work. There was force in the argument that an oblique motive would render the publication of an article unfair dealing, but his lordship was not satisfied on the evidence that there was an oblique motive. The defendants succeeded.

COUNSEL: *Moritz*, K.C., and *Lloyd-Jacob*; *H. Leon*, and *C. Haslam*.

SOLICITORS: *Judge, Hackman & Judge*; *Rubinstein, Nash & Co.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

In re Hovenden; Westminster Bank Ltd. *v.* Royal Hospital for Incurables.

Simonds, J. 15th March, 1938.

WILL—CONSTRUCTION—LEGACY TO INSTITUTION TO PROVIDE AMUSEMENT—TO BE SETTLED BY COMMITTEE OF PATIENTS—INSTITUTION DEVOTED TO PROVIDING PENSIONS—NO PATIENTS—INSTITUTION CHARITABLE—GIFT PREVAILING THOUGH CONDITION COULD NOT BE FULFILLED.

A testator, who died in 1937, gave legacies by his will to the Royal Hospital and Home for Incurables and the National Benevolent Institution, directing the respective governors to invest the same "and use the yearly income to provide some form of amusement to be settled by a committee of five of the patients of each of the said institutions." The first institution was prepared to accept the legacy and carry out the testator's expressed intentions. The second institution had no hospital or almshouse, but was a voting charity providing small pensions for aged and reduced members of the upper and middle classes of society. The pensioners were not patients, but lived in their own homes. The directions as to this charity could not be carried into effect.

SIMONDS, J., said that the gift to the National Benevolent Institution was one to a charitable institution indicating a general charitable intention, to which was added a particular intention which could not be carried into effect. The gift prevailed, though the condition could not be fulfilled. In the case of each institution there was a good charitable gift and the legacies could be paid to the treasurer of each institution on his receipt. The Royal Hospital and Home for Incurables would not be put on any terms.

COUNSEL: *J. B. Richardson*; *J. N. Gray*; *Sir Norman Touche*; *McMullen*; *Brunyate*.

SOLICITORS: *Clapham, Fraser & Williams*; *Farrer & Co.*; *Rashleigh, Turner, Mann & Rosher*; *Treasury Solicitor*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law]

In re Brouncker; Mairis *v.* Mandeville.

Simonds, J. 22nd March, 1938.

ADMINISTRATION — WILL — ANNUITIES AND LEGACIES RANKING *pari passu*—ESTATE INSUFFICIENT—VALUATION—ABATEMENT IN PROPORTION—WHETHER APPLICATION TO COURT NECESSARY.

By the will of the testatrix several legacies and annuities were bequeathed, all ranking *pari passu*. The estate was insufficient to pay them in full or provide the actuarial value of the annuities, all the annuitants being alive. The proper mode of administration was conceded to be to value the annuities, each annuitant receiving the amount of the valuation, subject to an abatement proportional to that of the legacies. The question arose whether the executors could do this on their own authority, or whether it could only be done when the court was administering the estate. The executors applied to the court for directions.

SIMONDS, J., said that in simple cases like this, where all the annuitants were living, executors could themselves properly administer the estate in accordance with the principle which would admittedly be applied in administration by the court. The statements in "Williams on Executors," 12th ed., p. 980, and "Theobald on Wills," 8th ed., p. 566, that the principle only applied where an estate was being administered under an order of the court were not well founded and seemed to be based on a misapprehension of an observation in *In re Nicholson's Estate*, I.R. 11 Eq. 177.

COUNSEL: *H. Rose*; *Winterbotham*; *J. Nesbitt*; *Hon. Benjamin Bathurst*.

SOLICITORS: *Wing & Eade*; *Beachcroft, Wakeford, May & Co.*; *Lowe & Co.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

High Court—King's Bench Division.

Times Furnishing Co. Ltd. *v.* Hutchings and Another.

Humphreys, J. 31st January, 1938.

DISTRESS—GOODS UNDER HIRE-PURCHASE AGREEMENT—PROVISION FOR AUTOMATIC DETERMINATION IN EVENT OF BREACH—HIRER'S BREACH—GOODS SEIZED—OWNER'S RIGHTS—LAW OF DISTRESS AMENDMENT ACT, 1908 (8 Edw. 7, c. 53), ss. 1, 2, 4.

Action under the Law of Distress Amendment Act, 1908, in respect of alleged illegal distress on furniture by a landlord.

The defendant, Hutchings, was the landlord of premises occupied by one, Johnson, as tenant. Johnson being in arrear with his rent, Hutchings, as he was entitled to do, on the 7th July, 1936, signed a warrant authorising the second defendant, a certificated bailiff, to levy a distress, which he duly did on the 8th, seizing *inter alia* articles which were the property of the plaintiffs, and had been the subject of a hire-purchase agreement made between them and Johnson. On the 14th July, the plaintiffs notified Hutchings in the terms of s. 1 of the Act of 1908 that Johnson had no right of property or beneficial interest in the property. On the 23rd September, Hutchings sold it. The plaintiffs accordingly brought this action under s. 2 of the Act of 1908, which provides that, if any landlord, after being served with the notice under s. 1, levies or proceeds with a distress on the goods in question, he shall be deemed guilty of an illegal distress. By s. 4 the Act does not apply to goods comprised in a hire-purchase agreement or in the possession of a tenant by consent of the owner in such circumstances that the tenant is their reputed owner. By cl. 8 of the hire-purchase agreement the plaintiff's consent to the hirer's possession of the goods was to be automatically determined if the hirer's landlord threatened or took any step to distrain on them.

HUMPHREYS, J., said that *Smart Bros.* v. *Holt and others* [1929] 2 K.B. 303, would have been conclusive of the present had the plaintiffs here proceeded, not under cl. 8, but under cl. 7 (*b*), which was similar to a clause under which the plaintiffs in that case proceeded. By cl. 7 (*b*), in case of any breach of the hire-purchase agreement, the suppliers might by written notice forthwith determine the agreement absolutely for all purposes, the hirer no longer being in possession of the goods with the suppliers' consent. Counsel then contended that cl. 8 made the contract voidable and not void, and that there was admittedly no notice to make what was voidable void, and relied on a series of cases in Chancery dealing with either a lease or such a matter as a licence to mine. In his (his lordship's) opinion, the law as to agreements was as stated by Lord Atkinson in *New Zealand Shipping Co., Ltd.* v. *Société des Ateliers et Chantiers de France* [1919] A.C.1, and the plaintiffs, unlike the hirer, Johnson, were entitled to have it held that the contract was void as the terms stood. Counsel for the defendants contended further that, reading the contract as a whole, despite the

provision in cl. 8 for automatic determination, other things remained to be done, as was shown by other clauses, particularly cl. 7. In his (his lordship's) opinion, however, the clauses must be construed separately, and by cl. 8 nothing further remained to be done. Finally, it was contended for the defendants that the goods here remained in Johnson's possession by the true owner's permission in such circumstances that Johnson was their reputed owner. The bankruptcy cases (which were material because the Bankruptcy Acts had always contained a provision similar to that of the Act of 1908) established that, where goods were left by the true owner in the possession of another party, and the true owner afterwards said that he had retracted the consent, he must show that he had taken some step to indicate his intention to do so (see *Rutter* v. *Everett* [1895] 2 Ch. 872). That principle was inconsistent with the suggestion that an owner's consent which was clearly established up to a point could be deemed withdrawn when the owner had taken no step to assert his right to the goods, and they were left in the hirer's possession. It was impossible to give to the statement in cl. 8 the same effect as a notice. The action failed.

COUNSEL: *H. J. Wallington*, K.C., and *T. F. Davis*, for the plaintiffs; *H. J. Astell Burt* and *B. M. Cloutman*, for the defendants.

SOLICITORS: *Lewis Lloyd & Co.*; *R. H. King & Co.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Compania Naviera Bachi *v.* **Henry Hosegood & Son, Ltd.**

Porter, J. 14th March, 1938.

CHARTER-PARTY—PROVISION PROTECTING SHIPOWNER FROM LIABILITY IN RESPECT OF BARRATRY—DISAFFECTION AMONG CREW OF SHIP—DISPUTE AS TO WAGES—DELAY IN DISCHARGE—WHETHER SHIPOWNER LIABLE.

Action claiming balance of freight.

The plaintiffs were owners of the steamer "Juan de Astigarraga," of the Port of Bilbao. By two bills of lading, a cargo of maize was shipped on the steamer from Argentina for carriage to Falmouth for orders. The steamer was ordered to Sharpness to discharge, and the defendants, as holders of the bills of lading, were owners and receivers of the cargo. The steamer arrived at Sharpness on 22nd August, 1937, and unloading began, but on the 30th August, after about 1,200 tons out of a total of 5,240 tons had been discharged, a number of members of the crew decided that it must be stopped, and prevented any further discharge until the 10th September, 1937. The defendants contended that they had suffered damage and were put to expense in consequence of the conduct of the crew, and they therefore claimed to set-off a sum against the freight payable by them to the plaintiffs. The plaintiffs contended that, if the discharge was interfered with as alleged, such interference was caused by certain disaffected members of the crew without the authority of and in breach of their duty to the plaintiffs, and in disobedience to the master. The action of those members of the crew amounted to barratry, and the plaintiffs were therefore not liable for any loss occasioned thereby. Alternatively, the plaintiffs contended that the action of those members of the crew amounted to a riot, civil commotion or strike, and that, therefore, the defendants were not entitled to any damages in respect of delay so caused. The charter-party provided, *inter alia*, that the steamer should not be liable for loss occasioned by barratry, or riots, strikes or labour stoppages, or for delay caused by strikes or commotions by men essential to the discharge of cargo. It was contended for the defendants that the whole of the trouble arose because the crew had not been paid any wages for many months, and were determined to enforce payment; that the barratry clause only applied if the conduct of the men was not due to want of due diligence by the owners; and that, if the owners had acted reasonably and paid the arrears of wages, there would have been no trouble.

PORTER, J., said that it was the practice on Spanish ships to pay wages to the crew when they returned to Spain after a round voyage, and as a rule no trouble arose. The shipowners did not make provision for the payment of wages at foreign ports. There was barratry on this occasion. He did not think that the commission of a crime was necessary to constitute it. It must be an act wilfully done to the prejudice of the owner, and not necessarily to injure him. It was said that the shipowners were at fault in not paying the wages of the crew in time, and in not taking steps to have them arrested; but he did not think that the shipowners were at fault in their method of payment. As regarded the non-arrest, they acted reasonably in endeavouring to persuade the men. Had they taken other steps, immediate violence might have resulted. There was no obligation on the part of the plaintiffs to pay wages at that time; nor to spend money to obtain a result in respect of which they were protected by the terms of their contract. They acted not unreasonably in trying to make terms with the men. There was no strike or lock-out of workmen essential to the discharge, since that was purely a matter for the stevedores, and there had been no riot, a necessary ingredient of which was violence. The loss was a loss by barratry and not by reason of the other matters which had been relied on, and that was sufficient. In the circumstances, the plaintiffs were entitled to recover, with costs.

COUNSEL: *A. J. Hodgson*, for the plaintiffs; *K. S. Carpmael*, K.C., and *H. L. Parker*, for the defendants.

SOLICITORS: *Ince & Co.*; *Thomas Cooper & Co.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Société Belge de Betons S.A. and Others *v.* **London and Lancashire Insurance Company, Limited.**

Porter, J. 14th March, 1938.

INSURANCE (MARINE)—HARBOUR WORKS IN SPAIN—CONTRACTOR'S PROPERTY INSURED—SEIZED BY WORKMEN—RISK OF "CAPTURE, SEIZURE, ETC." EXCEPTED FROM POLICY—LIABILITY.

Action claiming for a total loss under two marine insurance policies.

The plaintiffs were companies which had contracted to carry out harbour works at Valencia in Spain. They had valuable plant there, and tugs and other craft. To protect that property they took out two policies with *inter alia* the defendants. The risks insured against were *inter alia* "arrests, restraints and detainments of all kings, princes and peoples . . ." and riots, civil commotions, etc., in respect of the vessels. Words relating to "capture, seizure, etc.," were deleted from the policy. On the 20th July, 1936, civil war broke out in Spain. A general strike had begun in Valencia, and the town was, according to the plaintiffs, in a state of labour disturbance, riot and civil commotion. In September the workers seized and confiscated the whole of the plaintiffs' property. The plaintiffs therefore brought this action to recover under the policies for a total loss. They said that the workers in seizing their property acted under the authority of the civil governor of Valencia, and that their action was ratified by the Popular Executive Committee of Valencia. The defendants contended that the loss was not covered, because capture and seizure were not risks insured against.

PORTER, J., having reviewed the evidence as to the revolution at Valencia and the actions of the workmen, the Popular Executive Committee, and the central government there, said that the workmen had determined to take over the business and property of the plaintiffs for their own profit. The plaintiffs' representative had done all he could to preserve

the property of his employers, but, in order to save his life, he had had to leave, and, even if he had stayed, he could have done no more. The property was confiscated without compensation, and the question was whether there was a seizure such as was covered by the policy. No doubt the original seizure by the workmen was for their own purposes, but they had the support of the Popular Executive Committee, which at the material time had become the *de facto* and *de jure* government at Valencia. The whole property was taken, and, in his (his lordship's) opinion, there was a "restraint of peoples" within the meaning of the policy. That was enough to decide the case, and he would therefore not express any opinion whether there was also a loss by riot, civil commotion, strikes, or malicious damage. There must be judgment for the plaintiffs.

COUNSEL: *H. U. Willink*, K.C., and *W. L. McNair*, for the plaintiffs; *Sir Robert Aske*, K.C., and *Cyril Miller*, for the defendants.

SOLICITORS: *William A. Crump & Son; Ince & Co.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

In re Butler; Camberwell (Wingfield Mews) No. 2 Clearance Order, 1936.

Du Parcq., J. 9th and 23rd March, 1938.

HOUSING—CLEARANCE AREA—"HOUSES"—"OTHER BUILDINGS"—COMPOSITE BUILDINGS CONSISTING OF GARAGES WITH LIVING QUARTERS ABOVE—WHETHER ENTITLED TO EXCLUSION FROM.

Appeal under the Housing Act, 1936.

In January, 1936, the council of Camberwell Metropolitan Borough resolved that, subject to no move in the matter being made by the London County Council, a certain area should be declared a clearance area under s. 25 of the Housing Act, 1936. A clearance order was subsequently made, the premises comprised in the area consisting of a number of buildings of two storeys, with garages and workshops on the ground floor, and dwellings separately occupied on the upper floor. In each case there was a separate entrance to the upper floor. The appellant, Butler, objected to the order as mortgagee of the premises in the area. A public inquiry was held, and the Minister of Health confirmed the order. The division between adjoining dwellings on an upper floor did not always correspond with that between the garages and workshops below. Of the garages and workshops, no part which was unfit for human habitation was used for the purpose of a dwelling. By s. 25 of the Housing Act, 1936, power is given to local authorities to declare as a clearance area an area as to which they are satisfied that the houses and other buildings within it are either (1) unfit for human habitation, or (2) by reason of their bad arrangement or of the narrowness or bad arrangement of the streets, dangerous or injurious to the health of the inhabitants of the area. By para. 2 of the Third Schedule to the Act, which is headed "Clearance Orders," where a local authority have proceeded under s. 26 to make any clearance order in respect of buildings in a clearance area, houses or other buildings of the second class specified in s. 25 are to be excluded from the order, "Provided that the foregoing provisions of this paragraph shall not apply to a building constructed or adapted as, or for the purposes of, a dwelling, or partly for those purposes and partly for other purposes, if any part (not being a part used for other purposes) is by reason of disrepair or sanitary defects unfit for human habitation." *Cur. adv. vult.*

DU PARCQ., J., said that he agreed with the appellant's contention that it would be wrong to describe each garage or workshop, together with the dwelling or part of a dwelling immediately above it, as a "house" within the meaning of s. 25 of the Act of 1936. The case was accordingly distinguishable from *In re Wilmot: Hammersmith (Berghem Mews) Clearance Order* (1937), 157 L.T. Rep. 142. It would be equally wrong to describe the composite structures as "other buildings" within the meaning of that section. The dwellings above were "houses," and the garages or workshops below were "other buildings." That view was supported by observations made in the House of Lords in *Grant* v. *Langston* [1900] A.C. 383, at pp. 392, 393 and 399. He (his lordship) had not overlooked the definition of "flat" in s. 188 of the Act of 1936. On the assumption that those holdings were correct, counsel for the appellant's main contention was that the "other buildings" must be excluded from the clearance order by reason of para. 2 of the Third Schedule. In his (his lordship's) opinion, however, the proviso to the paragraph operated to prevent that exclusion. Counsel argued that the proviso should be read as referring only to cases where the "houses" or "other buildings" were considered as separate entities, constructed or adapted for the purposes of a dwelling or partly for those purposes and partly for other purposes, and any part of them used as a dwelling was unfit for human habitation. He (his lordship) could not so read the proviso. Buildings were included in a clearance area either (1) because unfit for human habitation, or (2) because dangerous or injurious to health for certain specified reasons. The object of para. 2 was to exclude buildings of the second class, thus exempting them from demolition, unless the effect of such an exclusion would also be to preserve from demolition a building which, or part of which, was within the first class. But for the proviso, all the garages and workshops here would be excluded. But, if they were so excluded, the paragraph itself would be applied to exempt "a building," namely, the composite structure with a dwelling above, to which, on the other hand, the proviso applied. The intention of the legislature would be defeated if the word "building" in the proviso were read as necessarily meaning a building of the second class only if considered as a unit and without reference to any larger structure of which it might form part. The appeal must be dismissed.

COUNSEL: *F. R. Evershed*, K.C., and *H. A. Hill*, for the appellant; *Valentine Holmes*, for the Minister of Health.

SOLICITORS: *Barnes & Butler; The Solicitor to the Ministry of Health.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Railway and Canal Commission.

In re Application of Beckermet Mining Co. Ltd.

Finlay, J., Sir Francis Taylor, K.C., and Sir Francis Dunnell. 24th January, 1938.

MINES AND MINERALS—APPLICATION TO LET DOWN SURFACE—COMPENSATION—WHETHER PAYABLE BEFORE SURFACE ACTUALLY LET DOWN.

Application for leave to search for and get iron ore and let down surface.

Although the iron ore in the area in question had been very little proved, ore had been found under a farm, and there was a possibility of scattered pockets of iron ore in other parts. Numerous owners were involved, and there was no opposition to the grant asked for, but considerable dispute as to its terms.

FINLAY, J., said that the working of the ore was clearly in the national interest. It had been argued for the surface owners that they ought to receive compensation, not, as was usually the case, as and when damage was caused by the letting down of their land, but for what might be called their apprehension that their land might be let down. Never in the history of that court had an award of compensation on that principle been approved, and the difficulties which would arise were obvious and were illustrated by the present case. There was a very large area under a great part of which it was practically agreed that there was no ore at all. It would be very difficult to say that, at once and with regard to all of it, compensation was now to be granted. The fact

that it was recognised that the application of the suggested principle must be limited to areas where the applicant company intimated that they had found or thought they were going to find ore, strongly suggested that there was something wrong with the principle. It conflicted, in his (his lordship's) opinion, with a series of decisions of the highest authority. There was *Backhouse* v. *Bonomi* (9 H.L. 503), and *West Leigh Colliery Co.* v. *Tunnicliffe & Hampson, Ltd.* [1908] A.C. 27. The speeches in the latter case, particularly Lord Macnaghten's, made it clear that there was no claim in the surface-owner, the reason being a principle which had been well settled at least since *Backhouse* v. *Bonomi, supra*. The principle which had led the House of Lords in those cases to the conclusion that there was no cause of action unless and until actual damage resulted, applied to the grant of compensation in such a case as the present. The duty of the court was to grant compensation and make such an order as was proper with regard to compensation in accordance with the provisions of s. 9 (2) of the Mines (Working Facilities and Support) Act, 1923. The principle adopted in the House of Lords ought to lead the court to the view that, for the purpose of s. 9, they also could not give effect to the suggestion that compensation should be allowed before the damage was done. If and when the land was let down, the person interested would be entitled to compensation. He was entitled to that and no more. The application must be granted.

Sir FRANCIS TAYLOR and Sir FRANCIS DUNNELL agreed.

COUNSEL: *H. V. Rabagliati*, K.C., *A. L. Hankey* and *P. G. Roberts*, for the applicant company; *David Bowen, Maurice Fitzgerald, R. F. G. Ormrod* and *T. G. Roche*, for interested owners.

SOLICITORS: *Johnson, Weatherall, Sturt & Hardy*, agents for *Brown, Auld & Brown*, Whitehaven; *Minet, Pering, Smith and Co.*, agents for *Brockbank, Helder & Ormrod*, Whitehaven; *Ellis & Ellis*, agents for *Howson, Dickinson & Mason*, Whitehaven; *Milles, Jennings White & Foster*.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Parliamentary News.

Progress of Bills.

House of Lords.

Aldridge Urban District Council Bill.
Read Second Time. [7th April.
Army and Air Force (Annual) Bill.
Read Second Time. [7th April.
Blackpool Improvement Bill.
Read Second Time. [7th April.
Bournemouth Gas and Water Bill.
Reported, with Amendments. [6th April.
Housing (Agricultural Population) (Scotland) Bill.
Read Second Time. [7th April.
Infanticide Bill.
In Committee. [7th April.
Lancashire County Council (Rivers Board and General Powers) Bill.
Reported, with Amendments. [6th April.
London County Council (General Powers) Bill.
Read Third Time. [7th April.
Rating and Valuation (Postponement of Valuations) Bill.
Read Third Time. [7th April.
Solicitors Amendment (Scotland) Bill.
In Committee. [7th April.
Wakefield Corporation Bill.
Reported, with Amendments. [6th April.

House of Commons.

Bacon Industry Bill.
Read Second Time. [11th April.
Bradford Extension Bill.
Amendments considered. [11th April.
Brixham Gas and Electricity Bill.
Reported, with Amendments. [7th April.
Irwell Valley Water Board Bill.
Reported, with Amendments. [7th April.
Middlesex Hospital Bill.
Read Third Time. [7th April.
Ministry of Health Provisional Order (Keighley) Bill.
Read First Time. [11th April.
Patents, etc. (International Conventions) Bill.
Read Second Time. [8th April.
Romford Gas Bill.
Reported, with Amendments. [7th April.
Royal Sheffield Infirmary and Hospital Bill.
Read Second Time. [11th April.
Sea Fish Industry Bill.
Read Third Time. [7th April.
Swinton and Pendlebury Corporation Bill.
Reported, with Amendments. [7th April.
Trade Marks Bill.
Read Second Time. [8th April.
West Surrey Water Bill.
Read Second Time. [11th April.

Societies.

Solicitors' Managing Clerks' Association.

LIGHT AND AIR.

At a meeting of this Association held on the 4th March the chair was taken by Mr. Justice SIMONDS, and Mr. ANDREW CLARK delivered a lecture on light and air. He wished, he said, to deal with something different from the ordinary text-book material, but must first give a general outline of the law on the subject. The nature of an action for infringement of the right to air and light was that of an action for nuisance, and it had all the characteristics of such actions. It was, however, unlike them in that there was no absolute right to light; the right must be acquired. The right was acquired in three ways. If acquired by express grant it was different from other kinds, because the grant might define the nature and extent of the right. Secondly, there might be an implied grant, and this differed in being wider than other rights. Thirdly, the right might be acquired by prescription, either at common law or by the Prescription Act. The period under the Act was twenty years next before the issue of the writ, provided there had not been one year's interruption. Like other instances of prescription, there was no right against the Crown. The right began to run for a new house from the time the window openings were present and the roof on; there was no need for glazing.

The right was in the nature of a negative easement; it was a right to prevent the erection of any obstruction which would so diminish the light as seriously and materially to interfere with ordinary user and comfortable enjoyment of the premises. It was not a right to as much light as the house had ever had. It was the amount left and not the amount taken away that counted. The leading case was *Colls* v. *Home & Colonial Stores* [1904] A.C. 205. This case had not, in fact, laid down any new principle; it had repeated what had been enunciated by Lord Hardwicke in *Fishmongers Co.* v. *East India Co.* (1752), 1 Dick. 163, and re-affirmed by Best, C.J., in *Back* v. *Stacey*, 11 C. & P. 465.

The question which had to be decided was the amount of light which an ordinary reasonable person would require, and this was a question of fact in each case, involving many considerations. As a general broad, rough principle, assuming a normal-shaped room and the circumstances of a normal residential suburb, it was fair to say that the light ought to be adequate over one-half of the room. The question had arisen whether this should vary with the locality, confusion having arisen from the judgment of Russell, J., in *Horton's Estates* v. *Beattie* [1927] 1 Ch. 75. In this case the house in question had been in a very dark street in Wolverhampton, and in none of the houses in that neighbourhood had more than one-quarter of the rooms been adequately lighted. The learned judge had remarked: "The human eye requires as much light in Wolverhampton as it does in Mayfair." While this was true on the face of it, it did not touch the question of how much of the room should be adequately lit for any given purpose, and this proportion did vary with the locality, as was shown in a number of House of Lords' decisions. In *St. Helens Smelting Co.* v. *Tipping* (1865), 11 H.L.C. 642, the nuisance was one of smell, but the principle had been laid down for all kinds of nuisance that the locality must be taken into consideration. In *Jolly* v. *Kine* [1907] A.C. 1, Mr. Justice Kekewich had held that a new building had left the plaintiff's rooms well lighted but, nevertheless, constituted an actionable nuisance. Appeal

had lain on the ground that this was contrary to *Colls' Case*. The Court of Appeal had upheld his judgment on the ground that it was a judgment of fact which could not be disturbed, Romer, L.J., dissenting. The House of Lords had been equally divided, as it had consisted of four members, and the judgment of the Appeal Court had therefore stood. In *Fishenden* v. *Higgs & Hill*, 153 L.T.R. 128, the views expressed by the Court of Appeal were that locality must be taken into consideration but that the locality must be a broad one.

The amount of light could not vary with user. There was no decision on this point, but it had been stated in clear terms by Lord Davey in *Colls' Case*, and by Parker, J., in *Browne* v. *Flower* [1911] 1 Ch. 226. There was one old case which seemed to contradict this principle: *A.-G.* v. *Queen Anne's Mansions*, 60 L.T. 759, where Mr. Justice Kekewich had held that a church had acquired a right to enough light to illumine stained glass windows and wall mosaics of great historical value. This, however, might not be the law now.

The ascertainment of the *quantum* of light was a difficult matter. It was easy enough when the building was completed. Unfortunately, few plaintiffs wanted to wait until the building was complete and then claim damages; they wanted to get an injunction out of a *quia timet* action. For this they must get an expert and work by theory. A further complication was introduced by the fact that a tall house might be built alongside an empty site opposite the plaintiff's dwelling, leaving him plenty of light at the time but threatening a nuisance if subsequently another person built a normal-sized house on the vacant site. This point had been raised in *Sheffield Masonic Hall* v. *Sheffield Corporation* [1932] 2 Ch. 17. In such cases it must be assumed that there was already on the empty ground a house of reasonable height.

The right to light could be lost in three ways. The first was unity of seisin in fee simple with unity of possession, and unity of seisin with unity of possession only suspended. The second way, abandonment, meant an obvious intention to abandon, such as blocking-up permanently and not only temporarily. Pulling down a house did not imply abandonment, as there might be intention to rebuild: *Kino* v. *Ecclesiastical Commissioners*, 14 Ch. D. 213. The third way was alteration of windows. The right was to the actual pencil of light coming through any given window, and if a house was rebuilt the windows in the new house must be in the same position as those in the old, enjoying at least a part of the same light, if the right was to be maintained. If the new house were set back from the old one with windows in the same position, obviously the right could be upheld, but an interesting position would arise if the house were set forward with the windows in the same position.

The right was enforced always by the occupier, whatever his legal position. An injunction which he obtained would be limited to the duration of his tenancy. A reversioner could enforce the right if he could show permanent damage to his reversion. The remedies available were interlocutory injunction, perpetual injunction and damages. The court had a discretion, when asked for an interlocutory injunction, to give damages in lieu; this was widely exercised, but it was only a discretion. This became important when the plaintiff obtained his interlocutory injunction but failed to obtain a perpetual one. It was now clear that if the plaintiff obtained an interlocutory injunction he was entitled to his relief, even although at the trial he did not get an injunction, because in granting damages the court had merely exercised a discretion.

Mr. Justice SIMONDS recollected some years ago delivering a lecture on this very subject to the Association under the chairmanship of Mr. Justice Clauson. Inferior as his lecture had been to that of Mr. Clark, it had led in a very short time to his being in a position to argue such cases as *Fishenden* and *Price* v. *Hilditch*.

Law Students' Debating Society.

At a meeting of the Society held at The Law Society's Court Room, on Tuesday, 5th April (Chairman Mr. P. H. North Lewis), the subject for debate was: "That the case of *Howard* v. *Odhams Press, Ltd.* [1938] 1 K.B. 1, was wrongly decided." Mr. S. D. Plummer opened in the affirmative. Mr. L. Wentworth opened in the negative. Mr. W. H. Stevens seconded in the affirmative. Mr. M. Hawkins seconded in the negative. The following members also spoke: Messrs. K. Elphinstone, J. M. Shaw, E. V. E. White, H. F. MacMaster, C. A. G. Simkins, D. C. Thompson and W. M. Pleadwell. The opener having replied, and the Chairman having summed up, the motion was carried by one vote. There were fourteen members and two visitors present.

The Hardwicke Society.

A meeting of the Society was held on Friday, 8th April in the Middle Temple Common Room, the President, Mr. G. E Llewellyn Thomas, in the chair. Mr. P. A. Picarda moved "That this House approves of the policy of non-intervention in Spain." Mr. J. E. Harper opposed. There also spoke Capt. W. R. Starkey, Mr. L. Ungoed Thomas (Ex-President), Mr. J. A. Petrie (Immediate Past President), Mr. Walter Stewart, Mr. Lewis Sturge (Hon. Treasurer), Mr. L. S. Weinstock, Mr. E. J. P. Cussen. The hon. mover having replied, the House divided, and the motion was carried by two votes.

Rules and Orders.

THE RATING AND VALUATION ACT (PRODUCT OF RATES AND PRECEPTS) RULES, 1938, dated March 31, 1938, made by the Minister of Health under sections 9 and 58 of the Rating and Valuation Act, 1925 (15 & 16 Geo. 5, c. 90), for prescribing the manner in which the product of a rate of a penny in the pound is to be estimated and calculated for the purposes of that Act and the amount due under a precept issued by a precepting authority to a rating authority is to be ascertained.

[S. R. & O., 1938, No. 265. Price 2d. net.]

Legal Notes and News.

Honours and Appointments.

The King has approved a recommendation of the Home Secretary that Mr. RICHARD O'SULLIVAN, K.C., be appointed Recorder of Derby, to succeed Mr. T. Hollis Walker, K.C., who has resigned. Mr. O'Sullivan was called to the Bar by the Middle Temple in 1914 and took silk in 1934.

The Colonial Office announces the following appointments and promotions in the Colonial Legal Service: Mr. F. S. PROTHEROE, appointed Magistrate, Protectorate Courts, Nigeria; Mr. A. D. SCHOLES, appointed District Magistrate, Gold Coast; Mr. L. A. W. ORR (Registrar of the High Court, Tanganyika), appointed Chief Registrar of the Supreme Court, Palestine; Mr. R. S. THACKER (Attorney-General, Fiji), appointed Judge of the Supreme Court, Kenya; Captain I. G. WAKELY, M.C. (Police Magistrate, Grenada), appointed Resident Magistrate, Jamaica.

Mr. P. S. RENNISON, of Bolton, who, as announced in our issue of 26th March, was recently appointed Town Clerk of Swindon, has now been appointed Town Clerk of Bolton, in succession to the late Mr. H. B. Ashford. Mr. Rennison was admitted a solicitor in 1928.

Professional Announcements.

(2s. per line.)

BOYCE, EVANS & SHEPPARD, of 14 Stratford Place, London, W.1, announce that DUDLEY EVANS, the surviving partner, has taken into partnership his son, JOHN DUDLEY EVANS. The name of the firm will remain unchanged.

Messrs. MARKBY, STEWART & WADESONS, of 5, Bishopsgate, E.C.2, announce that Mr. GEORGE HENRY HUDSON LYALL, who has been with the firm for many years, retired on the 31st March, 1938, owing to ill-health. The practice will be carried on by the continuing partners under the same firm name.

Notes.

The next general Quarter Sessions for the Borough of Stamford will be held on Wednesday, 27th April, 1938, at 11.30 a.m.

Sir Herbert Wilberforce has announced his intention to resign his position as Deputy Chairman of London Sessions, which he has held for the past twelve years. He is seventy-four.

Mr. Bertrand Watson has resigned his post as chairman of the London Police Court Mission Committee on being re-appointed a Police Court Magistrate for the Metropolis. Mr. D. L. Bateson has been elected chairman in his place.

A notice of the death at Leyton on the 9th April of Mr. William Bumberry, formerly Quartermaster-Sergeant, the faithful and much honoured friend and servant for thirty-five years of Duffield, Bruty & Co., solicitors, appeared in *The Times* last Tuesday.

An ordinary meeting of the Medico-Legal Society will be held at Manson House, 26, Portland Place, W.1 (Tel.: Langham 2127), on Thursday, the 28th April, at 8.30 p.m., when a paper will be read by Mr. William Latey, Barrister-at-Law, on "Medico-Legal aspects of the Matrimonial Causes Act, 1937." Members may introduce guests to the meeting on production of the member's private card.

The Council of the Royal Society of Arts give notice that the next award of the Swiney Prize will be made in January, 1939. The prize, which is awarded every five years to the author of the best published work on jurisprudence, is a cup of a value of £100, and money to the same amount. The prize is offered alternately for medical and general jurisprudence, and on the present occasion it will be awarded for medical jurisprudence.

The report of the Royal Exchange Assurance for 1937 states that the Court of Directors, having paid a dividend of 11 per cent. (less income tax) on the 6th November last on account of the next accruing dividend, recommend the annual general court, to be held on the 27th April, to order the payment on the 6th May next of a further dividend of 19 per cent. (less income tax), making 30 per cent. (less income tax) on the capital stock of the Corporation for the year.

The report of the Legal & General Assurance Society, Ltd., for 1937 was presented to the annual general meeting on Tuesday, 12th April. The report states that the directors recommend the payment on 1st July next, of (*a*) a final dividend of 1s. 3d. per share, free of income tax, making with the interim dividend of 9d. per share paid on the 1st January, 1938, a total dividend of 2s. per share, free of income tax, for the year 1937, and (*b*) a bonus of 3d. per share, free of income tax.

Wills and Bequests.

Mr. Henry Allen Izod, solicitor, of Bromley, Kent, left £19,442, with net personalty £18,937.

Mr. Thomas Henry Wordsworth, solicitor, of Wakefield, left £11,283, with net personalty £6,934.

Mr. Frank Richardson, solicitor, of Clifton, Bristol, left £29,911 with net personalty £22,855.

Mr. Henry Moncaster Hilbery, solicitor, of Gray's Inn, W.C., left £13,906, with net personalty £12,366.

Mr. Douglas Cameron Lee, retired solicitor, of Kensington and of Moorgate, left £71,207, with net personalty £70,172.

High Court of Justice.

EASTER VACATION, 1938.

NOTICE.

There will be no sitting in Court during the Easter Vacation.

During the Easter Vacation all Applications "which may require to be immediately or promptly heard," are to be made to the Honourable Mr. Justice WROTTESLEY.

The Honourable Mr. Justice WROTTESLEY will act as Vacation Judge from Thursday, 14th April, 1938, to Monday, 25th April, 1938, both days inclusive. His lordship will sit as King's Bench Judge in Chambers in King's Bench Judge's Chambers on Wednesday, 20th April, at 11 o'clock. On other days within the above period, applications in urgent matters may be made to his lordship personally or by post.

When applications are made by post, brief of counsel should be sent to the judge by post or rail prepaid, accompanied by office copies of the affidavits in support of the application, and also by a minute, on a separate sheet of paper, signed by counsel, of the order he may consider the applicant entitled to, and also an envelope, sufficiently stamped, capable of receiving the papers, addressed as follows: "Chancery Official Letter: To the Registrar in Vacation, Chancery Registrars' Chambers, Royal Courts of Justice, London, W.C.2."

The papers sent to the judge will be returned to the Registrar.

The address of the Vacation Judge can be obtained on application at the Chancery Registrars' Chambers, Room 136, Royal Courts of Justice.

Chancery Registrars' Chambers,
Royal Courts of Justice.
April, 1938.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement, Thursday, 28th April 1938.

	Div. Months.	Middle Price 11 April 1938.	Flat Interest Yield. £ s. d.	‡ Approximate Yield with redemption £ s. d.
ENGLISH GOVERNMENT SECURITIES				
Consols 4% 1957 or after	FA	110⅜	3 12 3	3 4 8
Consols 2½%	JAJO	74⅜	3 6 10	—
War Loan 3½% 1952 or after ...	JD	102⅜	3 8 2	3 5 3
Funding 4% Loan 1960-90	MN	112½	3 11 1	3 3 11
Funding 3% Loan 1959-69	AO	96⅜	3 2 0	3 3 4
Funding 2¾% Loan 1952-57	JD	96½	2 17 0	2 19 10
Funding 2½% Loan 1956-61	AO	89½	2 15 10	3 3 0
Victory 4% Loan Av. life 22 years ...	MS	110⅜	3 12 3	3 6 0
Conversion 5% Loan 1944-64 ...	MN	113	4 8 6	2 8 6
Conversion 4½% Loan 1940-44 ...	JJ	106½	4 4 6	1 18 1
Conversion 3½% Loan 1961 or after	AO	101⅜	3 8 10	3 7 10
Conversion 3% Loan 1948-53 ...	MS	101⅛	2 18 11	2 15 9
Conversion 2½% Loan 1944-49 ...	AO	98½	2 10 9	2 13 2
Local Loans 3% Stock 1912 or after	JAJO	87⅜	3 8 4	—
Bank Stock	AO	338	3 11 0	—
Guaranteed 2¾% Stock (Irish Land Act) 1933 or after	JJ	80	3 8 9	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	86½	3 9 4	—
India 4½% 1950-55	MN	113	3 19 8	3 3 7
India 3½% 1931 or after	JAJO	92	3 16 1	—
India 3% 1948 or after	JAJO	78½	3 16 5	—
Sudan 4½% 1939-73 Av. life 27 years	FA	109⅜	4 2 2	3 18 5
Sudan 4% 1974 Red. in part after 1950	MN	107½xd	3 14 5	3 5 8
Tanganyika 4% Guaranteed 1951-71	FA	109	3 13 5	3 2 11
L.P.T.B. 4½% "T.F.A." Stock 1942-72	JJ	105¼	4 5 4	2 15 11
Lon. Elec. T. F. Corpn. 2½% 1950-55	FA	91	2 14 11	3 3 3
COLONIAL SECURITIES				
Australia (Commonw'th) 4% 1955-70	JJ	105	3 16 2	3 12 1
Australia (Commonw'th) 3% 1955-58	AO	88	3 8 2	3 16 11
*Canada 4% 1953-58	MS	108	3 14 1	3 6 2
*Natal 3% 1929-49	JJ	100	3 0 0	3 0 0
New South Wales 3½% 1930-50 ...	JJ	97	3 12 2	3 16 4
New Zealand 3% 1945	AO	94	3 3 10	4 0 0
Nigeria 4% 1963	AO	107	3 14 9	3 11 8
Queensland 3½% 1950-70	JJ	97	3 12 2	3 13 2
*South Africa 3½% 1953-73	JD	103	3 8 0	3 4 10
Victoria 3½% 1929-49	AO	96	3 12 11	3 19 2
CORPORATION STOCKS				
Birmingham 3% 1947 or after ...	JJ	86½	3 9 4	—
Croydon 3% 1940-60	AO	95	3 3 2	3 6 6
*Essex County 3½% 1952-72 ...	JD	103	3 8 0	3 4 10
Leeds 3% 1927 or after	JJ	86	3 9 9	—
Liverpool 3½% Redeemable by agreement with holders or by purchase...	JAJO	100	3 10 0	—
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	71½	3 9 11	—
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	85½	3 10 2	—
Manchester 3% 1941 or after ...	FA	86	3 9 9	—
Metropolitan Consd. 2½% 1920-49 ...	MJSD	96½	2 11 10	2 17 6
Metropolitan Water Board 3% "A" 1963-2003	AO	86	3 9 9	3 11 0
Do. do. 3% "B" 1934-2003 ...	MS	88	3 8 2	3 9 4
Do. do. 3% "E" 1953-73 ...	JJ	96	3 2 6	3 3 10
*Middlesex County Council 4% 1952-72	MN	106xd	3 15 6	3 9 7
* Do. do. 4½% 1950-70	MN	111xd	4 1 1	3 8 8
Nottingham 3% Irredeemable ...	MN	85xd	3 10 7	—
Sheffield Corp. 3½% 1968	JJ	102	3 8 8	3 7 10
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS				
Gt. Western Rly. 4% Debenture ...	JJ	109	3 13 5	—
Gt. Western Rly. 4½% Debenture ...	JJ	116½	3 17 3	—
Gt. Western Rly. 5% Debenture ...	JJ	129½	3 17 3	—
Gt. Western Rly. 5% Rent Charge ...	FA	127½	3 18 5	—
Gt. Western Rly. 5% Cons. Guaranteed	MA	126½	3 19 1	—
Gt. Western Rly. 5% Preference ...	MA	116½	4 5 10	—
Southern Rly. 4% Debenture ...	JJ	107½	3 14 5	—
Southern Rly. 4% Red. Deb. 1962-67	JJ	108	3 14 1	3 10 0
Southern Rly. 5% Guaranteed ...	MA	126½	3 19 1	—
Southern Rly. 5% Preference ...	MA	114½	4 7 4	—

* Not available to Trustees over par.

‡ In the case of Stocks at a premium, the yield with redemption has been calculated at the earliest date; in the case of other Stocks, as at the latest date.